

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OCT 21 1981

BALLY MANUFACTURING
CORPORATION,

Plaintiff

vs.

D. GOTTLIEB & CO., WILLIAMS
ELECTRONICS, INC., AND
ROCKWELL INTERNATIONAL
CORPORATION

Defendants

H. Stuart Cunningham, Clerk
United States District Court

Civil Action 78 C 2246

DOCKETED

OCT 22 1981

Deposition of : GREGORY COX

Taken By : Defendants

Before : Laurie V. Blackmon

Date : September 11, 1981, 9:30 a.m.

Place : Miller, Kistler & Campbell, Inc.
1500 South Atherton Street
State College, Pennsylvania

COUNSEL PRESENT:

DONALD L. WELSH, Esquire
A. SIDNEY KATZ, Esquire

For - Plaintiff

MELVIN M. GOLDENBERG, Esquire

For - Williams Electronics, Inc.

SYDNEY M. LEACH, Esquire

For - D. Gottlieb & Co. and Rockwell
International Corporation

BENJAMIN NOVAK, Esquire

For - Gregory Cox

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CERTIFICATE OF DEPONENT

Baily vs. D. Gottlieb, et al, U.S. District Court, No. 78 C 2246
Caption and Venue

Gregory Cox

September 11, 1981

Name of Deponent

Date of Deposition

I, the undersigned, hereby certify that I have read the foregoing described deposition and that to the best of my knowledge it is true and accurate (with the exception of the following changes:)

PAGE	LINE	CHANGE	REASON FOR CHANGE
7	5	MR. LEACH'S To MR. KATZ'S	Incorrect name of Mr. KATZ'S NAME
27	24	LDE'S To LE'S	TYPO
101	21	Exhibit 21 to Exhibits	Incorrect reference to exhibit
170	19	TENTHS To TENS	TRANSCRIPTION ERROR
170	20	HUNDRETHS To HUNDREDS	" "
170	20	THOUSANDTHS To THOUSANDS	" "
175	11	TENTHS To TENS	" "
175	13	HUNDRETHS To HUNDREDS	" "
175	15	THOUSANDTHS To THOUSANDS	" "
176	7	SELF-WORD To SOFTWARE	" "

Date

Oct. 12, 1981

Signature of Deponent

Gregory Cox

GEIGER & LORIA REPORTING SERVICE, 1000 MARKET STREET, HARRISBURG, PA.

717/234-2109

I hereby certify the above signature was placed in my presence on October 12, 1981. I am a duly authorized Notary Public in Dauphin County, Commonwealth of Pennsylvania.

Susan M. Simon

Page	Count	Correction	Transcription Error
176	23	FOR TO OR	"
183	13	SELF-WORD TO SOFTWARE	"
186	9	PULLED TO POLLED	"
188	21	235 to ?	"
189	4	LIGHT TO PLAY	"
191	9	FLOAT TO FLOW	"
191	24	FLOAT TO FLOW	"
193	7	" " "	"
193	14	" " "	"
193	17	" " "	"
194	4	THE TO A	"

Cannot be certain that first page of exhibit has any relationship to the software.

Page	Count	Correction	Transcription Error
198	13	IN TO AND	"
205	24	METRICS TO MATRIX	"
206	7	" " "	"
206	11	" " "	"
206	22	" " "	"
207	6	" " "	"
207	14	" " "	"
207	21	" " "	"
208	1	" " "	"
208	4	VECTR to vector	"
209	5	" " "	"
208	6	METRICS TO MATRIX	"
221	2	INTERPRETING TO INTERFACING	"
221	20	METRICS TO MATRIX	"
237	7	JOIST TO JOY	"
256	7	INTELLEC TO INTEL	"
278	19	FLOAT TO FLOW	"

I hereby certify the following signature was placed in my presence on October 12, 1981. I am a duly authorized Notary Public in Dauphin County, Commonwealth of Pennsylvania.

Oct 12, 1981

[Signature]
Susan M. Simon

1 MR. LEACH: This deposition is taken pursuant to the
2 Federal Rules of Civil Procedure. There are no stipulations
3 other than the witness may sign the transcript before any notary
4 public, if that is agreeable?

5 MR. KATZ: Yes, it is.

6 MR. LEACH: Is that agreeable to you, Mr. Novak?

7 MR. NOVAK: I would just state by way of introduction
8 I am completely new to this case, and I have never seen any of
9 the pleadings or anything. But I understand that Mr. Cox is here
10 to be interrogated regarding his affidavit and declaration. Is
11 that basically the framework? I am just wondering from his point
12 of view. That is what I understand to be basically what he is
13 here as a witness for.

14 MR. LEACH: I think that is essentially correct although
15 I am not limiting ourselves to those areas. If necessary we
16 are going to inquire into anything that may be relevant to the
17 subject matter proceedings.

18 MR. KATZ: We take the position on behalf of the
19 plaintiff that the purpose of reopening the discovery for the
20 purpose of taking this deposition was based on the declaration
21 and affidavit as was represented to Judge Grady.

22 We will assert and it is our position that the deposi-
23 tion should be limited to the subject matter of the affidavit
24 and declaration.

25 MR. GOLDENBERG: As the one that made the motion to

1 have the discovery reopened for Judge Grady, I said nothing which
2 so limited the scope of the deposition, the subject matter of
3 this litigation.

4 And whatever knowledge this witness has, I think we
5 are entitled to have it.

6 MR. KATZ: I refer Mr. Goldenberg to the decision and
7 petition which was dated September 4, 1981.

8 MR. GOLDENBERG: You may refer to that all you will.
9 This is a deposition taken pursuant to leave granted by
10 Judge Grady in the Northern District of Illinois.

11 The patent office may have its own thoughts about the
12 scope, but that is in no way binding on us.

13 And speaking for myself -- Mr. Leach can take his own
14 position on behalf of his clients -- we will examine about what
15 we think appropriate in all aspects of the case that this wit-
16 ness did conceivably have knowledge.

17 MR. KATZ: We stated our position. Perhaps it would
18 be premature to argue at this point. Let's proceed and we will
19 take up any specific questions if they arise.

20 MR. LEACH: If you feel it is necessary to move for a
21 protective order --

22 MR. KATZ: Yes, but I don't think we will be able to
23 adjourn this deposition readily unless you are agreed to it and
24 go back to court and get a protective order and then come back
25 and continue the deposition. So I think it would be most

expeditious to handle it here. We can resolve it among ourselves.

MR. GOLDENBERG: I think we all stated our positions.

GREGORY EARL COX, called as a witness, being sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. LEACH:

Q Will you please state your full name for the record.

A Gregory Earl Cox.

Q Where do you live?

A 683 Berkshire Drive, State College, Pennsylvania.

Q Who are you employed by?

A H.R.B. Singer.

Q What is the address of your employer?

A Science Park Road, State College, Pennsylvania.

Q Were you or your attorney served with a subpoena in connection with this deposition?

A Yes.

Q Would you recognize a copy of that subpoena if you were shown it?

A Yes.

Q Is this a copy of the subpoena that you were served with?

A Yes.

(Subpoena marked Greg Cox Exhibit 1.)

BY MR. LEACH:

1 Q I see you have some documents with you. Did you bring
2 a copy of the subpoena with you that you were served with?

3 A Yes, I did.

4 Q May I see it, please.

5 (Subpoena marked Greg Cox Exhibit 2.)

6 BY MR. LEACH: These are two separate subpoenas. What you have there
7 is the first subpoena.

8 BY MR. LEACH:

9 Q And when you say "there," are you referring to Greg
10 Cox Exhibit No. 2?

11 A Yes. The date of the deposition was delayed. And
12 this is the second subpoena.

13 MR. NOVAK: This is the 1st of September. They are
14 both the original subpoenas apparently. You have never seen
15 these to my knowledge.

16 A That's right.

17 MR. NOVAK: So the subpoena you were just referring to,
18 the two are his copy. And the one you received was the subpoena
19 for the September 1st hearing, which was postponed by agreement
20 of counsel.

21 The other subpoena he has not seen because I agreed to
22 accept service on his behalf with Mr. Williams.

23 MR. LEACH: Then, Mr. Novak, do you have a second
24 subpoena that was served upon the witness?

25 (Subpoena marked Greg Cox Exhibit 3.)

1 MR. KATZ: Can we have an understanding, Mr. Leach,
2 that we will receive prompt copies of the exhibits that you
3 mark here today, including the subpoenas.

4 (Discussion held off the record.)

5 MR. KATZ: Pursuant to an agreement between counsel,
6 each party will retain the originals of the documents that are
7 marked and provide copies to the other parties. Hopefully we
8 will be able to do that today so that we will have them when we
9 leave, viewing the time situation.

10 MR. LEACH: I also have a notice of deposition I would
11 like to have marked.

12 (Notice of Deposition marked Greg Cox Exhibit 4.)

13 BY MR. LEACH:

14 Q Mr. Cox, did you bring some documents with you today
15 in response to the subpoena that was served upon you?

16 A Yes.

17 Q May I see those documents?

18 A I have a copy of the affidavit and declaration which
19 you have seen and is referenced in the deposition.

20 I have copies of the software documentation for the
21 El Toro game.

22 I have a personal copy of the programmer's manual from
23 the Intellec MCS4 system.

24 I have a copy of a schematic from the El Toro inter-
25 face hardware.

And I have some notes generated during an analysis and evaluation of the El Toro software.

I have a large photograph copy of the El Toro schematic.

And I have a few hand-written notes relating to conversations with various representatives of Mr. Leach's firm.

MR. GOLDENBERG: May we see those, please.

Those relate to conversations with Mr. Schnayer.

BY MR. LEACH:

Q When you say "those," which ones are you referring to?

A I will take them one at a time.

Q Why don't you separate them.

A This relates to a conversation -- initial conversation with Mr. Schnayer regarding a consulting arrangement with him and a technical question regarding the operation of the El Toro machine.

MR. GOLDENBERG: Let's see if we can identify that a little more specifically.

It is written on the back of a piece of notepaper which seems to be put out by some candidate for something or another.

I think the thing to do is probably just go ahead and mark it.

BY MR. LEACH:

Q The last document that you identified as notes of a

1 conversation with Mr. Schnayer, let's have that marked as an
2 exhibit.

3 (Notes marked Greg Cox Exhibit 5.)

4 A This note relates to my dates of employment at Cyan
5 Engineering -- start and termination date -- and some questions
6 from Mr. Schnayer on the bottom of the piece of paper regarding
7 operation of the El Toro game.

8 (Notes marked Greg Cox Exhibit 6.)

9 BY MR. LEACH:

10 Q This Exhibit 6, does this relate to a conversation that
11 you had with someone?

12 A With Mr. Schnayer.

13 Q Did you make those notes during the course of your
14 conversation with Mr. Schnayer?

15 A The notes on the bottom of the page, yes.

16 Q What about the notes on the top of the page?

17 A He had previously asked for my dates of employment
18 with Cyan Engineering. I gave those dates to him at the beginning
19 of the conversation.

20 Q So you made the notes on the top of the page prior to
21 calling him?

22 A Some notes relating to a telephone call to Steve Mayer
23 at Atari.

24 (Notes marked Greg Cox Exhibit 7.)

25 BY MR. LEACH:

1 Q Referring to Exhibit 7, did you make those notes
2 during the course of your conversation with Mr. Mayer?

3 A Some were made prior to the conversation. The infor-
4 mation at the bottom is a telephone number which I determined
5 before I spoke with him.

6 The note at the top relates to our conversation,
7 general background information regarding the action and his
8 participation.

9 And the notes in the middle are Mr. Schnayer's address
10 and relationship with the firm.

11 Q Do you have anything else?

12 A Some notes relating to technical questions asked by
13 Mr. Schnayer in a telephone conversation.

14 (Notes marked Greg Cox Exhibit 8.)

15 MR. KATZ: I think for further clarity of the record,
16 we should put that on the record.)

17 (Discussion held off the record.)

18 BY MR. LEACH:

19 Q Have you brought any other documents with you?

20 A Yes. I have some information relating to my consult-
21 ing arrangement with Fitch, Even. Some notes on a time spent
22 consulting for them.

23 (Notes marked Greg Cox Exhibit 9.)

24 A A bill to them in March for consulting services in
25 February.

(Bill marked Greg Cox Exhibit 10.)

BY MR. LEACH:

Q When you say a bill, to them, you previously stated Fitch, Even. Are you referring to the law firm of Fitch, Even, Tabin, Flannery & Welsh?

A Yes.

Q That is the firm that is representing Bally Manufacturing Corporation, isn't it?

A That's my --

MR. KATZ: I object to the question as lacking foundation.

BY MR. LEACH:

Q Would you answer the question?

A Could you repeat the question?

(Question read back.)

A That's my understanding, yes.

BY MR. LEACH:

Q Do you have any other documents?

A Yes. A hand-written copy of a letter and a bill for services in April.

Q Let's mark the bill for services as an exhibit.

(Bill for services marked Greg Cox Exhibit 11.)

(Letter dated May 4, 1981, marked Greg Cox Exhibit 12.)

A And a copy of the bill for consulting services in August.

(Bill marked Greg Cox Exhibit 13.)

BY MR. LEACH:

Q The bill for services has been marked as Exhibit 13.
Have you brought any other documents with you?

A Those are the only documents I have.

Q Have you ever given a deposition before?

A No.

Q Let me explain to you a little bit of the procedure.

I will, of course, be asking the questions, as will other attorneys present. I am sure if you have seen Perry Mason you will realize that from time to time objections will be made to my questions.

The way this works, since there is no judge here to rule upon the objections, objections are made, but you will still be asked to give an answer in response to the question so that the answer, the objection, and the question will all be on the transcript, and at a later time, the judge will be able to rule upon the answer and whether or not your question may come into evidence.

(Discussion held off the record.)

BY MR. LEACH:

Q So that you will still be asked to answer the questions.
You should still give your answer after everyone has finished objecting to the question.

If you are instructed not to answer the question, I

1 will still ask you whether you refuse to answer the question,
2 and you will answer that question yes or no. So that if we
3 later go to court and seek to compel your answers to the question,
4 we will have on the record your clear indication of whether or
5 not you refused to answer the question.

6 Are you familiar with Cyan Engineering?

7 A In what respect?

8 Q Did you at one time work for Cyan Engineering?

9 A Yes.

10 Q What were the dates of your employment with Cyan
11 Engineering?

12 A If I can refer to that exhibit, I can give you the
13 exact dates. The exhibit you have in your hand.

14 Q Let me show you Exhibit 6.

15 A I began work for Cyan Engineering on March 4, 1974.
16 Terminated my employment with them on August 16, 1974.

17 Q Were you employed by Cyan Engineering during May of
18 1974?

19 A Yes.

20 Q Do you recall an open house that was held at Cyan
21 Engineering in May of 1974?

22 MR. KATZ: Object to the question as indefinite as to
23 what you mean by open house.

24 A Would you please explain what you mean by open house?

25 BY MR. LEACH:

1 Q Have you never heard the term open house before?

2 A Yes.

3 MR. KATZ: Object to the question. If you are
4 referring to the open house as used in the declarations or
5 affidavits, it would save a lot of time to get right to it
6 instead of beating around the bush.

7 MR. GOLDENBERG: Mr. Katz, I think you are permitted
8 at this proceeding to make objections and state reasons for
9 them, not make speeches, sir. That will save a lot of time.

10 MR. KATZ: I think if we don't beat around the bush
11 and get right to the questions we will save a lot of time.

12 Is there an outstanding question?

13 BY MR. LEACH:

14 Q Have you ever referred to the term open house in
15 connection with Cyan Engineering?

16 A Yes, I have.

17 Q When you were referring to open house in connection
18 with Cyan Engineering, were you referring to an open house that
19 was held in Cyan Engineering in May of 1974?

20 A I was referring to an event that took place. I am
21 uncertain as to the exact date. It was sometime in the May-
22 June time frame. During that event --

23 Q When you say "May-June," are you referring to May
24 and June of 1974?

25 A Yes.

1 Q Then if I refer to the open house at Cyan Engineering
2 you understand that I am talking about the event that occurred
3 in May or June of 1974?

4 A An event which took place during which Atari employees
5 and their families visited the Cyan facility for a tour and
6 were then taken to a park for a picnic.

7 Q So let me ask you my question again.
8 When I refer to the Cyan Engineering open house, you
9 will understand that to mean an event that took place in June
10 or May of 1974, is that correct?

11 A Yes.

12 Q Do you recall an El Toro pinball machine being present
13 at the Cyan Engineering open house?

14 A Yes, I do.

15 Q The El Toro pinball machine that was present at the
16 Cyan Engineering open house was controlled by a microprocessor,
17 was it not?

18 A Yes, it was.

19 Q The El Toro pinball machine was played at the Cyan
20 Engineering open house, wasn't it?

21 MR. KATZ: Objection to the question as leading.

22 A To the best of my recollection, yes.

23 BY MR. LEACH:

24 Q Did you observe anyone playing the El Toro pinball
25 machine at the open house?

1 A I don't recall a specific event of observing any
2 individual playing the El Toro game.

3 Q Were you present at the open house at Cyan Engineering?
4

5 A Yes.

6 Q Who else was present at the open house?

7 MR. KATZ: To the best of his recollection I assume
8 you're asking?

9 A Do you mean in addition to myself?

10 BY MR. LEACH:

11 Q Right. I asked who else was present at the open
12 house.

13 A The Cyan Engineering employees, members of their
14 family, a group of employees from the Atari facility in
15 Los Gatos, and members of the Atari employees' families.

16 Q Did the members of the Atari people's families include
17 children?

18 A Not to the best of my recollection.

19 Q Were there any children present at the open house?

20 A I believe there were a few children present who were
21 the members of the Cyan Engineering families.

22 Q So there were children present, weren't there?

23 A Yes.

24 Q Do you know the names of each person that was present?

25 A No, I do not.

1 Q Do you remember the names of anyone who was present?

2 A Yes, I do.

3 Q Would you please give me the names of the people
4 that you remember who were present at the Cyan Engineering open
5 house?

6 A Larry Emmons, --

7 MR. GOLDENBERG: I think the record should show that
8 in answering the question the witness is looking at I believe
9 the affidavit.

10 Am I correct, sir?

11 A Yes.

12 MR. KATZ: Page one of the affidavit of Gregory Cox.

13 BY MR. LEACH: at the Cyan Engineering open house?

14 Q Can you give me the names without referring to the
15 affidavit?

16 A Yes. Larry Emmons, Steve Mayer, Ron Milner.

17 Q Would you spell those for the court reporter?

18 A Larry Emmons, E-m-m-o-n-s, Steve Mayer, M-a-y-e-r,
19 Ron Milner, M-i-l-n-e-r, Mike Rodgers, R-o-d-g-e-r-s, Jodie
20 Sperry, S-p-e-r-r-y.

21 Those are the only names I remember specifically.

22 A Do you remember the names of anyone from the Atari
23 facility in Los Gatos that was there?

24 A No, I do not.

25 Q Do you remember the names of anyone else who was there

1 who may not have been from the Atari facility in Los Gatos or
2 from Cyan Engineering?

3 MR. KATZ: Object to the question as indefinite and
4 alternative.

5 A Steve Mayer's wife was there. I do not remember her
6 first name. Ron Milner's wife was also there. Those are the
7 only other individuals I remember.

8 BY MR. LEACH

9 Q Then there are some people that were there that you
10 don't remember?

11 A Yes.

12 Q Do you recall seeing any of the children playing the
13 El Toro game at the Cyan Engineering open house?

14 A No, I don't.

15 Q At the time of the Cyan Engineering open house, the
16 El Toro pinball game generally played as a pinball game, did it
17 not?

18 MR. KATZ: Object to the question as leading and
19 indefinite as what the question means by "played as a pinball
20 game."

21 A Would you be more specific in terms of referencing
22 the use of the word "play"?

23 BY MR. LEACH:

24 Q Do you recall having a telephone conversation with
25 me prior to this day?

1 A Yes.

2 Q Do you recall me asking you if the El Toro game
3 generally played as a pinball game?

4 A I don't remember that specific question.

5 Q Do you recall what your answer was?

6 A No, I do not.

7 Q Do you recall discussing the general subject matter
8 of the El Toro game?

9 A Yes.

10 Q Do you recall what you said during that telephone
11 conversation with regard to the playing of the El Toro pinball
12 game?

13 A No.

14 Q Do you recall me asking you -- and I quote -- "Didn't
15 the El Toro generally play like a pinball game?"

16 A I don't recall that.

17 Q Do you recall answering, "Yeah. With the computer it
18 played just like it did with all the electromechanical parts in
19 it before it was modified"?

20 MR. KATZ: Objection to the question as leading.

21 A I don't have a specific recollection of those words.

22 BY MR. LEACH:

23 Q Do you disagree with those words now?

24 MR. KATZ: Objection to the question as speculative,
25 calling for answers to hypothetical questions, and

1 argumentative.

2 A As long as there is an agreed-upon definition of what
3 the term "played like a pinball machine" is, that statement would
4 be accurate in terms of meaning that it would be indistinguish-
5 able other than the visual display between the operation of a
6 standard electromechanical El Toro machine and the machine that
7 was controlled by the 4,004 microprocessor.

8 MR. KATZ: Objection to the question and the answer.
9 The answer is not responsive and move to strike.

10 BY MR. LEACH:

11 Q Do you have anything else to say?

12 A No.

13 Q The microcomputer control of the El Toro game had a
14 ball on it, did it not?

15 A Yes.

16 Q It had a plunger?

17 MR. KATZ: Objection to the question as leading.
18 Objection to the question as indefinite.

19 A Yes.

20 BY MR. LEACH:

21 Q You could shoot the ball out on the playfield with
22 the plunger, is that not right?

23 A Yes.

24 Q When the ball rolled down the playfield, would it score
25 points and light lights?

1 A Yes.

2 MR. KATZ: Object to this line of questioning as
3 lacking foundation and asking hypothetical questions as to what
4 would occur without any specific reference with any foundation.

5 BY MR. LEACH:

6 Q So if we defined play of a pinball machine as a ball
7 rolling on an inclined playfield and scoring points and light-
8 ing lights, the El Toro machine would do that, would it not?

9 MR. KATZ: Objection to the question as indefinite,
10 lacking foundation, and hypothetical without reference to any
11 specific time frame or in what condition the so-called El Toro
12 was.

13 Mr. Leach knows that the El Toro is an electro-
14 mechanical pinball machine made by Bally which was converted
15 -- and he knows -- at different stages of construction at
16 different times.

17 MR. LEACH: Are you making an objection?

18 MR. KATZ: Yes. And I am stating the basis for the
19 objection on this record.

20 MR. GOLDENBERG: Mr. Katz, really. Mr. Katz, you
21 have gone far beyond. No, sir. I don't think I should sit
22 here and listen to this kind of foolishness.

23 This witness is being called to give his recollection
24 of events. And what you are doing, sir, is going far beyond
25 any stating of objection.

1 You are doing everything you can to move this witness'
2 testimony in a certain direction by suggesting things to him
3 by these endless speeches you are making. And I think, sir, if
4 you reflect on it you will find it inappropriate and you should
5 stop it.

6 MR. LEACH: Yes, and I object to Mr. Katz's coaching
7 the witness on the record. I think when the patent examiner
8 reads this transcript he will realize that Mr. Katz's speeches
9 are designed to tip off the witness -- or appear to be designed
10 to tip off the witness.

11 MR. KATZ: I object to your characterization of what
12 I am doing because I think it is just your leading questions.

13 This is a third-party witness, and you are leading
14 him around by using indefinite questions. What you will do is,
15 you will take his answers in one context and cite them in
16 papers filed in the patent office to support another position.

17 You know you have already done that, and therefore
18 I think especially because of this reissue proceeding and the
19 fact that these transcripts are being submitted to the patent
20 office great care should be exercised in the asking of questions.

21 If you are going to ask a question, I think it is
22 incumbent on you, Mr. Leach, to specify what time frame you are
23 talking about so you don't take the answer to a question, which
24 in the witness' mind he is referring to one time frame, and use
25 it in the patent office to support some proposition of an

1 existence of a fact with respect to a different time frame.

2 We are only concerned that the record accurately
3 reflect the development of the facts, and no more than that.
4 That is why I so strenuously object to the manner in which your
5 questions are being asked.

6 BY MR. LEACH:

7 Q Mr. Cox, you understand that Mr. Katz will have an
8 opportunity to ask you his questions and clarify anything he
9 feels is unclear, do you not?

10 A Yes.

11 MR. GOLDENBERG: Mr. Cox,, let me say this also, sir.
12 If you don't understand a question, you are entitled to ask any
13 person who puts the question to you what he means.

14 MR. NOVAK: I pity the examiner that will have to read
15 this record at this stage.

16 This is Mr. Cox's first deposition. There has been a
17 good deal of leading. Just ask him what happened and what he
18 knew about it.

19 MR. GOLDENBERG: I think we are entitled to lead.
20 I don't accept Mr. Katz's characterization of this witness as
21 a third-party witness at all. I assure you of that, sir. And
22 I think we are entitled to lead. He has very clearly shown an
23 identification with the plaintiffs in this case.

24 MR. KATZ: Whether or not you are entitled to lead, I
25 think it still makes the questions and answers suffer because

1 of it. So if you could avoid it, it probably would be better.

2 BY MR. LEACH:

3 Q At the Cyan Engineering open house, from a player's
4 perspective, did the El Toro pinball game play as a pinball
5 game?

6 MR. KATZ: Object to the question as indefinite as
7 to what is meant by "from a player's perspective" and whether or
8 not this witness has the ability to determine to have formed an
9 opinion.

10 I object to the question as calling for an opinion
11 with no foundation to show that this witness ever formed such
12 an opinion at the time to which you are referring.

13 If you are asking him to form an opinion now, we
14 object to your use of this witness as an expert, rather than a
15 fact witness for which he has been noticed here.

16 A Would you repeat the question, please.

17 (Question read back.)

18 A Are you asking my opinion on the subject?

19 BY MR. LEACH:

20 Q Do you have an opinion? Why don't you just tell me --

21 MR. KATZ: Object to the question on the same basis
22 as before.

23 You are obviously calling for an opinion, and you
24 haven't established a foundation that this witness had formed
25 an opinion at the time in question.

1 It is unfortunate that these objections will not be
2 mled upon because the deposition is going to be provided to the
3 patent office, and there is no provision for ruling on these
4 objections.

5 But I strenuously make this objection and think it is
6 totally improper what you are doing, Mr. Leach.

7 MR. LEACH: You will have an opportunity to strenu-
8 ously cross-examine the witness if you disagree with anything
9 he says.

10 MR. KATZ: But that doesn't get to the objection.
11 The objection is basically lack of foundation.

12 A Would you repeat the question, please.

13 (Question read back.)

14 A If you can define what "player's perspective" means,
15 I may be able to answer your question. I don't understand
16 what you mean by that expression.

17 BY MR. LEACH:

18 Q Have you ever played a pinball game?

19 A Yes.

20 Q Do you know what a pinball game looks like from your
21 perspective when you are playing it?

22 A Yes.

23 Q Why don't we call that a player's perspective?

24 A It would seem somewhat dependent on who the player
25 was. I could give you my impressions of the game when I played

1 it, but not when any other individual played it.

2 Q Do you recall the El Toro pinball game ever mal-
3 functioning at the Cyan Engineering open house?

4 A No.

5 Q So as far as you know the El Toro pinball game
6 played properly at the Cyan Engineering open house?

7 MR. KATZ: Objection to the question as leading and
8 indefinite as to what he means by "properly."

9 A It played as it was designed to play, the design
10 being the implementation of the microprocessor-based system,
11 not the electromechanical system.

12 BY MR. LEACH:

13 Q So the El Toro game at the Cyan Engineering open
14 house played as a microprocessor implementation of a pinball
15 game, is that correct?

16 A Yes.

17 Q Do you recall in our previous telephone conversation
18 my asking you the following question:

19 "So basically, as far as the play of the
20 game was to someone sitting there, hitting
21 the flippers, and knocking the ball around,
22 it was indistinguishable from when it was
23 electromechanical although I suppose it had
24 incandescent displays and stuff?"

25 A I don't remember any specifics of our prior

1 conversations. The only thing I recall is a question on your
2 part regarding the open house. Any other details of that con-
3 versation I have forgotten.

4 Q Let me still ask you this question. Do you remember
5 your answer to that question as being, "Yeah. Yeah. The sound
6 and the appearance of the game were a little different"?

7 A I don't recall that answer.

8 MR. KATZ: Mr. Leach, did you tape-record conver-
9 sations with the witness?

10 MR. LEACH: Mr. Katz, if you want to pose an inter-
11 rogatory to us to proceed in proper discovery, I will be happy
12 to respond.

13 MR. KATZ: But you are not going to answer now?

14 MR. LEACH: I don't want to get diverted from the
15 deposition. If you want to ask me later on --

16 BY MR. LEACH:

17 Q Is there anything in the answer that I just quoted
18 to you that is inaccurate?

19 A Would you repeat it, please -- and the question?

20 Q The question:

21 "So basically, as far as the play of the
22 game was to someone sitting there, hitting
23 the flippers, and knocking the ball around,
24 it was indistinguishable from when it was
25 electromechanical?"

1 The answer, "Yes. The sound and the appearance of
2 the game were a little different."

3 MR. KATZ: Objection to the question. He has already
4 answered the question that he didn't recall what transpired in
5 that conversation.

6 MR. GOLDENBERG: Mr. Katz, the witness just asked to
7 have it repeated to him. Would you deny him that right?

8 A Are you asking me that question now, or are you ask-
9 ing my answer to the question at the time that you phrased it
10 on the telephone?

11 BY MR. LEACH:

12 Q What I am asking you is, do you find anything now
13 that is inaccurate in that answer?

14 A No. That answer would be accurate.

15 Q So basically as far as the play of the game was to
16 somebody sitting there, hitting the flippers and knocking the
17 ball around, it was indistinguishable from the electro-
18 mechanical version, is that correct?

19 A There were some differences.

20 Q Other than the sound and the appearance of the game
21 being a little different because you did not have the relays
22 clicking, would you agree that it would be indistinguishable?

23 A The relays were not present. The score display was
24 using LDE's instead of mechanical display. And there were
25 interconnection wires emanating from the unit itself.

1 Those were the differences between a normal electro-
2 mechanical El Toro and the machine used at Cyan Engineering.

3 Q Were those the only differences or the only differences
4 that you can think of?

5 A The only difference that I can think of now.

6 Q Did the flippers work at the Cyan Engineering open
7 house as far as you know?

8 A As far as I know, yes.

9 Q Did the bumpers work at the Cyan Engineering open
10 house as far as you know?

11 A Yes.

12 Q Did the displays work at the Cyan Engineering open
13 house as far as you know?

14 A Yes.

15 Q When the ball rolled around on the playfield at the
16 Cyan Engineering open house, did the machine score properly as
17 far as you know?

18 A Yes.

19 Q Do you recall any switches becoming stuck at the Cyan
20 Engineering open house?

21 A No, I do not.

22 Q Going back to the Cyan Engineering open house and the
23 people that were present, did you meet any of the children that
24 were present?

25 A I don't recall.

Q Do you recall whether any of the children were explicitly instructed that the matters that they were being exposed to were confidential or secret?

MR. KATZ: Objection to the question as leading and lacking foundation.

A Could you repeat the question?

(Question read back.)

A I would only have knowledge of any instructions I was given regarding confidentiality and would not have firsthand knowledge of any instructions to any other individuals.

BY MR. LEACH:

Q Do you have any information that any of the children that were present were expressly told that the matters they were being exposed to were confidential or secret?

Now here I want to distinguish from your firsthand knowledge and something you may have been told.

A I have no knowledge that they either were or were not instructed in any way regarding the confidentiality.

Q So you don't have any knowledge one way or the other whether the children were expressly told that the open house was secret or confidential, is that correct?

A Yes.

Q I believe you previously mentioned that you remembered Steve Mayer's wife being present, and that you recall Ron Milner's wife being present.

1 Do you know the names of the other wives that were
2 present?

3 A I don't recall any, no.

4 Q Do you recall any of the wives being present, whether
5 or not they were expressly instructed that the matters they were
6 being exposed to at the Cyan Engineering open house were secret
7 or confidential?

8 A I have no firsthand knowledge of any instructions to
9 them regarding confidentiality of the information. It was the
10 general procedure both of Cyan Engineering and Atari that all
11 information relating to work within the company was confidential.

12 And in social situations with various employees of
13 Cyan Engineering, I was led to understand that the wives of
14 those employees understood that policy.

15 Q Do you have any information that the wives were
16 expressly instructed that the matters they were being exposed to
17 at the Cyan Engineering open house were secret or confidential?

18 And here I am distinguishing from firsthand knowledge
19 and what you may have been told.

20 MR. KATZ: Objection to the question as having been
21 asked and answered.

22 A Do you mean a specific event where the wives were
23 told directly that any information learned or observed during
24 this open house would be strictly proprietary or confidential?

25 BY MR. LEACH:

1 Q I mean, do you have any information or have you been
2 told by anyone that the wives were expressly instructed that
3 the matters at the Cyan Engineering open house were to be
4 secret and confidential?

5 A I was instructed prior to the open house that the
6 information regarding all of the developments of Cyan Engineer-
7 ing were confidential.

8 Q But I am speaking now and my question was with respect
9 to the wives.

10 A I'll finish my answer.

11 MR. KATZ: Objection. Please let him finish his
12 answer. He indicated he wasn't finished.

13 A And since our families were invited, it was incumbent
14 upon us as employees to communicate this confidentiality of
15 information to our families.

16 BY MR. LEACH:

17 Q Were you expressly told to communicate that to your
18 families?

19 A Not to the best of my recollection. However, I did
20 communicate such cautions to my family.

21 Q Was your family present at the Cyan Engineering open
22 house?

23 A Yes.

24 Q I don't think you listed them before. What are their
25 names?

1 A My wife is Joetta. My daughter is Samantha.

2 Q What was Samantha's age at the time of the Cyan
3 Engineering open house?

4 A Approximately four.

5 Q Did you tell Samantha that she was not to speak or
6 disclose anything concerning the Cyan Engineering open house?

7 A No.

8 Q Is it correct that you do not remember one way or the
9 other whether any express warning concerning confidentiality
10 or secrecy was given to anyone at the Cyan Engineering open
11 house?

12 Q MR. KATZ: Objection to the question. He has already
13 answered that he was expressly told.

14 A I was cautioned as to the confidentiality of the
15 information as were the other employees within Cyan Engineering.
16 BY MR. LEACH:

17 Q Who cautioned you?

18 A Steve Mayer.

19 Q Did you witness any of the other employees being
20 cautioned?

21 A To the best of my recollection, this caution was
22 given to a group of people at the same time. These people were
23 Cyan employees. But I don't believe it was all of the employees
24 in the company. A group of four or five people, including
25 myself.

1 Q So is it correct that you can not specifically
2 testify that each Cyan Engineering employee that was present was
3 to your firsthand knowledge given an express warning concern-
4 ing confidentiality and secrecy at the Cyan Engineering open
5 house?

6 A Yes.

7 Q Do you have any firsthand knowledge concerning whether
8 the Atari group from Los Gatos was given an express warning
9 concerning confidentiality or secrecy of the Cyan Engineering
10 open house?

11 A No, I have no firsthand knowledge of that warning.

12 Q Do you have any firsthand knowledge concerning
13 whether the wives of the Atari employees were given an express
14 warning concerning confidentiality or secrecy at the Cyan
15 Engineering open house?

16 A No.

17 MR. KATZ: Excuse me. Can I have the last question
18 and answer reread, please.

19 (Question and answer read back.)

20 BY MR. LEACH:

21 Q Do you recall whether any children were present other
22 than the children of the Cyan Engineering employees?

23 A To the best of my recollection, the only children
24 were of families of Cyan Engineering.

25 Q Did you specifically know each child that was present

1 at the Cyan Engineering open house?

2 MR. KATZ: Object to the question as indefinite as
3 to what you mean by "know."

4 A I was acquainted with some of the children that were
5 at the open house.

6 BY MR. LEACH:

7 Q Can you testify that each child that was present was
8 to your firsthand knowledge a child of a Cyan Engineering
9 employee?

10 A No, I cannot. Because I don't remember all the
11 children that were present.

12 Q So it is true that some of the children may possibly
13 have not been children of Cyan Engineering employees?

14 MR. KATZ: Object to the question as calling for
15 pure speculation on the part of the witness and trying to put
16 his answer in your terms, Mr. Leach, and trying to get him to
17 agree with you, which is I think very objectionable and argumenta-
18 tive.

19 A I don't have a specific recollection of any children
20 being present who were not members of Cyan Engineering families.

21 BY MR. LEACH:

22 Q But that is not the question I asked.

23 MR. KATZ: Your question was objectionable.

24 A Would you repeat the question, please.

25 BY MR. LEACH:

1 Q That's okay. Let me continue.

2 The information I am trying to elicit from you is to
3 the extent you were aware specifically what children were
4 present.

5 MR. KATZ: He has answered that question and you
6 asked it.

7 BY MR. LEACH:

8 Q Isn't it true that you cannot specifically say that
9 each child present was in fact a child of the Cyan Engineering
10 employees?

11 MR. KATZ: Object to the question. Asked and
12 answered.

13 A I can't recall of the specific individuals that were
14 present. To the best of my recollection, there were no
15 children present that didn't belong to families of Cyan Engineer-
16 ing. What may have been, I have no opinion on.

17 BY MR. LEACH:

18 Q I am not asking you to speculate. I am just asking
19 you to tell me the extent you were aware of specifically who
20 was present.

21 MR. KATZ: He has already answered that question,
22 Mr. Leach, and you keep persisting in calling for speculation
23 while at the same time you are saying you are not asking for
24 speculation.

25 A Is there a question?

1 BY MR. LEACH:

2 Q No. Isn't it true that you were only acquainted with
3 some of the children that were present at the Cyan Engineering
4 open house?

5 A I don't have a specific recollection of all the
6 individuals that were present. It's possible that I may have
7 been acquainted with all of them.

8 Since I don't have a complete recollection of who was
9 present, I can't state whether I was acquainted with all of them
10 or not.

11 Q So it is possible that you were not acquainted with
12 all of them, is that right?

13 MR. KATZ: Objection to the question as calling for
14 speculation again.

15 You keep persisting, Mr. Leach, in asking this
16 question until you succeed in putting your words in the witness'
17 mouth.

18 MR. LEACH: No. The witness said it was possible he
19 may have been acquainted with all of the children that were
20 present. What I am trying to establish is that he may not have
21 been acquainted with all the children present.

22 A Both situations are possible. Either that I may or
23 that I may not have been acquainted.

24 MR. KATZ: And I objected to the whole line of
25 questioning as lacking foundation as to what his recollection

1 was. What he knew at that time, not what he remembers now.

2 BY MR. LEACH:

3 Q So it is possible that you may not have been
4 acquainted with all the children that were present, is that
5 correct?

6 MR. KATZ: Objection to the question. Calling for
7 speculation.

8 MR. NOVAK: Answer.

9 A Repeat the question, please.

10 (Question read back.)

11 A That is possible.

12 BY MR. LEACH:

13 Q Can you specifically say that each person that was
14 present at the Cyan Engineering open house was an employee of
15 Atari or an employee of Cyan Engineering or a member of the
16 employees' family?

17 MR. KATZ: Can I have that question read back?

18 (Question read back.)

19 A It was my understanding at the time of the open house
20 that all the attendees were employees of Atari or Cyan or mem-
21 bers of their families.

22 Since that time I do not have a specific recollection
23 of the individuals that were present. But I still have that
24 understanding that the attendees were limited to those people.

25 BY MR. LEACH:

1 Q Do you have firsthand knowledge that each person was
2 either an employee of Atari or Cyan or a member of their
3 immediate family other than your general understanding at the
4 time?

5 A I was met and introduced to all of the people that
6 attended and do not recall meeting or being introduced to an
7 individual who was not a member of a family of Cyan or Atari
8 or an employee.

9 Q If you cannot now specifically remember who was
10 present, isn't it fair to say that you cannot specifically say
11 that each person was an employee of Cyan or Atari?

12 MR. KATZ: Object to the question as mischaracter-
13 izing what he just said.

14 BY MR. LEACH:

15 Q Or a member of their immediate family?

16 MR. KATZ: Objection to the question as completely
17 mischaracterizing what he just stated.

18 He answered your question and you are doing this
19 again. Same thing.

20 A I stated that I don't recall meeting anybody that was
21 not a member of a family or employee of Cyan or Atari.

22 However, I do not have specific recollection of all
23 the individuals that were present. That's to the best of my
24 recollection on the matter.

25 BY MR. LEACH:

1 Q Can you testify positively that you met each person
2 that was present at the Cyan Engineering open house.

3 MR. KATZ: He just did.

4 A Yes.

5 BY MR. LEACH:

6 Q Were you guarding the door?

7 A No, I was not.

8 Q Where were you during the course of the Cyan Engineer-
9 ing open house?

10 A Within the facilities of Cyan Engineering.

11 Q Do you mean that you were not in any particular loca-
12 tion, but generally circulating about the facilities of Cyan
13 Engineering?

14 A Yes.

15 Q Is it possible that during the course of your circu-
16 lating about the facility of Cyan Engineering during the course
17 of the Cyan Engineering open house that you may have circulated
18 by someone --

19 MR. KATZ: Objection to the question as calling for
20 speculation, asking a hypothetical question, and completely out
21 of order.

22 A Most things are possible. I'd be happy to answer
23 specific questions not calling for supposition on my part.

24 BY MR. LEACH:

25 Q All I am asking for is that to which your presence at

the Cyan Engineering open house insured that you could not have missed someone who may have attended the Cyan Engineering open house. Is it possible?

A It was a reasonably small-sized group. I was accompanying them during the open house and during the picnic for a period of approximately six hours.

Q To the best of my recollection, I met everybody present at the open house.

Q Were you introduced to each and everyone of the children?

MR. KATZ: Objection to the question. Asked and answered.

A Let me clarify the answer to the last question.

Q What I meant was that I met and was introduced to all of the visitors, including the Atari personnel and their families. I knew the Cyan Engineering people and their wives from prior social occasions.

A I have no specific recollection as to the -- to whom the individual children were.

BY MR. LEACH:

Q Wasn't it true that you were not introduced to each and every one of the children?

A That's possible.

Q How long had you been employed at Cyan Engineering at the time of the Cyan Engineering open house?

A Approximately two months.

MR. LEACH: Let's take a short recess at this point.

(Recess.)

AFTER RECESS

BY MR. LEACH:

Q You made reference to a consulting arrangement that you had with the plaintiff's law firm, Fitch, Even, Tabin, Flannery & Welsh.

Were you at some point contacted by a representative of their firm in connection with this case?

A I don't know what the details of this case are. I was contacted regarding my involvement with the El Toro game at Cyan Engineering.

Q You indicated earlier that Exhibit 8 includes notes that you had taken during a conversation with Mr. Schnayer.

Is Mr. Schnayer a representative or employed by Fitch, Even, Tabin, Flannery & Welsh?

A To the best of my knowledge, yes.

MR. LEACH: I don't think there is any dispute that he is an attorney for them

BY MR. LEACH:

Q I show you Exhibit 8.

Were you asked by Mr. Schnayer to do anything in connection with your consulting work?

A Yes.

1 Q Does Exhibit 8 reflect one of the things that
2 Mr. Schnayer asked you to do?

3 A Yes.

4 Q Does Exhibit 8 include the writing, "Look for response,
5 stuck switches, multiple closures"?

6 A Yes.

7 Q Were you asked by Mr. Schnayer to look for stuck
8 switches or multiple closures?

9 MR. KATZ: Objection to the question as indefinite.

10 BY MR. LEACH:

11 Q Were you asked by Mr. Schnayer to look for stuck
12 switches?

13 A At no time did I look for any stuck switches or
14 multiple closures. He asked me to evaluate the response of the
15 El Toro microprocessor-based machine to the conditions of stuck
16 switches and multiple closures, based on documentation he pro-
17 vided regarding the hardware and software of the El Toro game.

18 Q Is it true that the documentation that you used in
19 making your evaluation was provided by Mr. Schnayer?

20 A Yes.

21 Q Did you take the documentation provided by Mr. Schnayer
22 and look for the response that the El Toro would give to stuck
23 switches, assuming that the documentation he provided represented
24 the software in the El Toro machine?

25 A Yes.

(Declaration marked Greg Cox Exhibit 14.)

BY MR. LEACH:

Q We have marked as Exhibit 14 a document entitled Declaration for Gregory Cox, which appears to be dated 7/9/81 and containing several copies of documents attached to it.

Showing you Exhibit 14, does Exhibit 14 contain copies of the documents that you studied in making your evaluation or your analysis?

A May I see the copies of these exhibits that I provided to you?

MR. KATZ: Read back the last question and answer.

(Question and answer read back.)

MR. LEACH: I am providing the witness with copies of the documents that he produced this morning in answer to the subpoena.

A That's enough.

Yes, these are copies of the documents provided by Mr. Schnayer.

BY MR. LEACH:

Q Are those copies of the document that you studied in making your analysis?

A Yes.

Q Did you study any documents in addition to those documents that are attached to Exhibit 14?

A There was one additional document which was a portion

1 of the programmer's manual for the Intellec 4.

2 (Manual marked Greg Cox Exhibit 15.)

3 BY MR. LEACH:

4 Q I have a document that you produced this morning
5 which I have labled as Greg Cox Exhibit 15.

6 Is this the portion of the manual that you referred
7 to?

8 A Yes, it is.

9 Q How long had it been since you had programmed an
10 Intellec system prior to your making this analysis?

11 A My last work on the Intellec system was in August of
12 1974, just prior to leaving Cyan Engineering. And I began
13 review of these documents in February of 1981.

14 Q Did Mr. Schnayer tell you what the document was that
15 he was sending to you?

16 A No, he did not.

17 Q Did you ask Mr. Schnayer for any specific documents?

18 A Only the document you have here, Exhibit 15, which is
19 the portion of the programmer's manual.

20 Q Did you ask Mr. Schnayer for a copy of the software
21 listing for the El Toro game?

22 A No. He provided that without being asked.

23 Q The document attached to Exhibit 14, is that a copy of
24 the software listing of the El Toro machine which you reviewed
25 in making your analysis?

1 A Yes.

2 Q Did you actually look at a different copy of the pro-
3 gram from the one that is physically attached to Exhibit 14?

4 A Yes.

5 Q Did you make notes on the copy that you looked at
6 when making your analysis?

7 A Yes, I did.

8 Q Is the copy which you reviewed and made notes on here
9 today?

10 A Yes. These two documents are the copy I used in
11 doing the analysis of the El Toro software.

12 MR. LEACH: Let's label these as exhibits.

13 (Patch log marked Greg Cox Exhibit 16; Notes marked
14 Greg Cox Exhibits 17, 18, 19; Program marked Greg Cox Exhibit 20.)

15 BY MR. LEACH:

16 Q I have taken the two documents that you just referred
17 to and have broken them up into five different documents which
18 we have labeled Exhibits 16, 17, 18, 19, and 20.

19 Are these the documents which you were just referring
20 to?

21 A Yes, they are.

22 Q What is Exhibit 16?

23 A It might be better if I describe the relationship of
24 the various exhibits at one time.

25 Exhibit 20 is the basic software program for the

1 El Toro machine as generated using a Teletype connected to the
2 Intellec 4 system.

3 Exhibit 16 is called a patch log. Patch being
4 described as changes to a software program for the purpose of
5 corrections or modifications to that program. Exhibit 16 is
6 then a list of patches or modifications to Exhibit 20, to
7 modify the operation of that software.

8 Exhibits 17, 18, and 19 contain notes I made during
9 an analysis of Exhibit 16 and 20 to refresh my memory regard-
10 ing how the patches of Exhibit 16 were incorporated within
11 the program of Exhibit 20.

12 Q Do you specifically remember the steps that were in
13 the El Toro machine software at each particular point in time
14 during the development of the El Toro machine?

15 MR. KATZ: Objection to the question as indefinite.

16 A Repeat the question, please.

17 (Question read back.)

18 MR. KATZ: Objection to the question as indefinite.

19 There is no reference to what you mean by "particular point in
20 time."

21 A The development of any software system involves a
22 preliminary version of the program which is then tested and
23 evaluated and corrected and modified during the development
24 cycle of software program.

25 This sequence was used and implemented in the El Toro

1 software development. At various times during the development
2 of the software different versions of the software program were
3 in use and being evaluated within the machine.

4 BY MR. LEACH:

5 Q So you remember the steps of each version of the
6 software program that was in use each time during the develop-
7 mental phase of the El Toro machine?

8 MR. KATZ: Objection to the question as indefinite
9 and failing to state what time reference you are referring to.

10 A What do you mean by "steps"?

11 BY MR. LEACH:

12 Q Referring to Exhibit 16, each line of the exhibit
13 represents what?

14 A Each line represents a memory location within the
15 Intellec 4 memory system and the contents of that memory at the
16 time the program was being used on the El Toro machine.

17 Q Referring to Exhibit 20, what does each line of
18 Exhibit 20 represent?

19 A It also represents the same thing, the instruction
20 location or memory location within the memory of the micro-
21 processor system and the contents of the memory location in
22 alphanumeric form.

23 Q Do you remember the contents of the memory location
24 for each different version of the software program that was
25 used on the El Toro pinball machine?

1 A Do you mean every specific location within the memory
2 of the system for every specific program version?

3 Q Yes.

4 A No, I do not remember that.

5 Q If you do not remember the contents of each memory
6 location and each different version of the software program
7 used in the El Toro pinball machine, how do you distinguish or
8 how can you tell one version of the software program from another?

9 A During the development cycle of the El Toro program,
10 certain changes were made to the basic operation of the soft-
11 ware.

12 I recall that at no time was there a major modifica-
13 tion to the basic architecture of the software program. How-
14 ever, certain minor modifications were made in reviewing docu-
15 ments, Exhibits 20 and 16.

16 I recognize my own handwriting on these documents and
17 recall the operation of the software. There were certainly
18 problems and difficulties encountered during the development
19 of the software which have been corrected in Exhibit 16 as it
20 reflects on Exhibit 20.

21 To the best of my recollection, this is the final
22 version of the software program that was used in the El Toro
23 machine and its microprocessor version during my employment
24 with Cyan Engineering.

25 Q Do you specifically remember that this was the final

1 version that was used by the El Toro pinball machine?

2 A To the best of my recollection, yes.

3 Q Do you base that recollection upon examining the con-
4 tents of each preliminary location that is listed in Exhibit 20
5 as modified by Exhibit 16?

6 A Indirectly, yes. More specifically in examining the
7 functional operation and flow of the software documented in
8 Exhibit 16 and 20.

9 I do recall the specific function and operation of
10 the software. However, I don't specifically recall the ones
11 and zeros contained in each memory location of the memory.

12 Q Could minor changes have been made to the software
13 listing of Exhibit 20 and Exhibit 16 which did not change the
14 function of the system without you being aware of them upon
15 reviewing these two exhibits to refresh your recollection?

16 MR. KATZ: May I hear that question?

17 (Question read back.)

18 MR. KATZ: Objection to question as calling for
19 speculation and asking him hypothetical questions and not
20 establishing a foundation that he could actually answer that
21 question.

22 A Are you asking an opinion of me now in viewing these
23 documents whether other memory contents could perform the same
24 function?

25 BY MR. LEACH:

1 Q No.

2 A Can you clarify your question?

3 Q I am asking you the extent of your memory and I am
4 asking you, could modification have been made to the software
5 listing of the Exhibit 16 and 20 that did not change the func-
6 tion of the system without you being aware of them or remember-
7 ing them upon reviewing Exhibits 16 and 20 to refresh your
8 recollection.

9 MR. KATZ: Objection to the question on the same
10 grounds as before, without establishing any foundation for this
11 witness to be able to answer that question.

12 Obviously it might call for an examination of every
13 function and every step and its equivalence if there are any
14 to be able to answer the question as to what is possible and
15 what isn't possible.

16 Therefore I strongly object to this type of question.
17 You said you wanted to ask him for his memory, and the witness
18 has already testified as to his memory. Now you are doing the
19 same thing you did before. You are trying to put your words
20 in his mouth, and I object to that technique in questioning.
21 I think while it might be appropriate in trial advocacy, it has
22 no place in the patent office proceeding.

23 A Most things are possible. I can discuss what did
24 take place regarding these documents in this program while
25 I was employed at Cyan Engineering.

1 While I was employed at Cyan Engineering, to my know-
2 ledge no other individual wrote or modified any of the software
3 that was used in the El Toro game, that there were no other
4 changes to this program other than what is documented in these
5 two exhibits, 16 and 20, and that this was the program used in
6 the operation of the El Toro machine.

7 BY MR. LEACH:

8 Q Do you specifically recall that these listings are
9 the final version of the software in the El Toro pinball
10 machine?

11 A It is possible that one additional listing may have
12 been located, which would have taken the contents of both
13 Exhibits 16 and 20, put all of the corrections in line, incor-
14 porated them directly within the single program.

15 The memory contents would have been exactly the same
16 in this other version if it did exist. My memory is not clear
17 on whether it was generated or not.

18 The memory contents would be the same with the
19 exception of control steps to enter and exit the changes shown
20 in Exhibit 16. Functionally and instructionally it would be
21 exactly equivalent to Exhibit 16 and 20.

22 Q Then there would be some additional control steps
23 that would be inserted into the final software listing?

24 A No. There would have been control steps used in 16
25 and 20 only for the purpose of entering and exiting these

1 software patches, which would not be necessary if those patches
2 were put in line in the program. And those would be deleted
3 from a future version of the program.

4 Q So that in order to make the program function with
5 Exhibit 20 and 16, you would have to insert control patches in
6 order to make the program of Exhibit 20 and Exhibit 16 function?
7 You would have to insert control steps into the program to modify
8 the program of Exhibit 20 so that it functioned in accordance
9 with the patches of Exhibit 16, is that correct?

10 A Yes. Those control steps are included within
11 Exhibit 16.

12 Q Exhibit 20 contains markings and notations which do
13 not appear on the software listing that is attached to
14 Exhibit 14.

15 Did you make those notations on Exhibit 20?

16 A Yes.

17 Q Is it true that you then modified the listing of
18 Exhibit 20 in making your analysis of the operation of the
19 software program represented by these listings?

20 A I modified the copy of the program listing. I did
21 not modify the program.

22 Q Doesn't the program of Exhibit 20 have to be modified
23 before it will represent what you believe is the final version
24 of the software:

25 MR. KATZ: Objection to the question as leading and

1 mischaracterizing testimony.

2 A Let me try and define what I understand to be the
3 final version of the program.

4 A program is a sequence of logic or functional
5 instructions. In the case of the El Toro machine, they pro-
6 vided certain hardware control functions and timing control
7 functions.

8 Exhibit 20 was a version of a program to control the
9 El Toro machine using the Intellec microcomputer system.

10 That program, as modified by Exhibit 16, is the final
11 version of the software program used in the El Toro machine to
12 the best of my knowledge.

13 It is possible, although I do not have a specific
14 recollection, that a clean program listing may have been gener-
15 ated, which would have incorporated Exhibit 16 in line to those
16 instructions shown in Exhibit 20.

17 If that had been done, there would have been abso-
18 lutely no difference in terms of functional operation or in
19 terms of functional program sequences and program operation
20 between what's shown here in Exhibit 16 and 20 and the cleaned
21 version of that program.

22 So although they would have been different documents,
23 they would have been exactly the same in terms of their effect
24 within the El Toro machine.

25 The markings on Exhibit 20 are shown to reflect those

1 changes in Exhibit 16 as they reflect into the typed version
2 of the program listing that are provided for clarity and follow-
3 ing the logical flow of the program.

4 BY MR. LEACH:

5 Q So then is it true that you modified the listing of
6 Exhibit 20 in accordance with the modifications that are
7 indicated on Exhibit 16?

8 A Yes.

9 Q I notice on the first page of the Exhibit 20 there is
10 a piece of paper that is taped to the first page of Exhibit 20
11 that has some writing underneath.

12 What is the writing underneath of this piece of
13 paper?

14 A The writing underneath was a preliminary correction
15 to the program which appeared early in the listing of Exhibit 16,
16 which was later modified at the time I was preparing the soft-
17 ware program.

18 A The later modification is shown on the taped piece of
19 paper which covers the older Xeroxed version of those program
20 instructions.

21 Those set of instructions do exactly the same thing
22 but in a different way.

23 Q Where does this modification that appears directly on
24 Exhibit 20 come from?

25 MR. KATZ: Do you understand the question?

1 A No, I am not sure I do.

2 BY MR. LEACH:

3 Q When you wrote this modification on Exhibit 20, where
4 did you obtain that information?

5 A From Exhibit 16.

6 Q Would you show it to me from where it appears on
7 Exhibit 16?

8 A (Indicating.)

9 Q And just so that the record will be clear, would you
10 please circle the area of Exhibit 20 that we are discussing
11 now and label that as A.

12 A Is this the area you're referring to?

13 Q Yes.

14 A It appears on the second page of Exhibit 16 in an
15 area I have marked as AA.

16 Q Would you circle the area that you have marked as
17 AA on Exhibit 16?

18 A (Marking.)

19 Q Where does the portion of the patch or modification
20 that is represented by the piece of paper that has been taped
21 over Exhibit 20, which I will ask you for purposes of clarity
22 to circle and label as B.

23 MR. KATZ: Could I have that question read back?

24 (Question read back.)

25 MR. KATZ: Objection to the question as being

1 meaningless and grammatically incorrect.

2 BY MR. LEACH:

3 Q You have circled a portion of Exhibit 20 and labeled
4 it as B.

5 Where does the portion which you have circled and
6 labeled as B come from on Exhibit 16?

7 A Area B of the program is in the same location as area
8 A and is an extension of that by incorporating some of the
9 instructions below the area A within that patch.

10 Q On Exhibit 16 have you labeled the area of the patched
11 program represented by Exhibit 16 that the portion of the pro-
12 gram marked B comes from?

13 A Yes.

14 Q Did you label it BB?

15 A Yes. Is this clear that this portion of the program
16 is AA and corresponds to the circled area A?

17 MR. GOLDENBERG: Would that mean lines 12 to 19 are
18 AA, and BB is lines 12 to 25?

19 A Yes. This shows that these two notations are on
20 Exhibit 20 are not only exactly equivalent, but actually
21 occupy the same memory location space and have the same memory
22 location in the patch log Exhibit 16.

23 (Recess.)

24 AFTER RECESS

25 BY MR. LEACH:

1 Q Referring to Exhibit 16, when I originally asked you
2 to circle the portion of Exhibit 16 where the portion labeled
3 A on Exhibit 20 came from, didn't you circle steps 12 through
4 25?

5 A Yes. Because I was looking at the attached piece of
6 paper which we designated as B and caught that error and corrected
7 that nomenclature on the paper.

8 Q When I originally asked you to circle the portion
9 where A came from, you circled steps 12 through 25 and placed
10 upon Exhibit 16 the marking that circles those steps, is that
11 correct?

12 A Yes.

13 Q That was an error and it should be steps 12 through
14 19, is that correct?

15 A Correct.

16 Q The portion labeled BB is intended to encompass steps
17 12 through 25, is that correct?

18 A Yes.

19 Q And that is the portion that represents the correspond-
20 ing steps of Exhibit 16, which correspond to the portion labeled
21 B on Exhibit 20, is that correct?

22 A Yes.

23 MR. LEACH: Why don't we take a recess for lunch.

24 (Recess.)

25 AFTER RECESS

1 MR. LEACH: We have discussed, in view of the possi-
2 bility we would not be able to complete this deposition today,
3 the prospect of coming back for a second day of testimony, and
4 everyone has agreed to adjourn today at approximately a quarter
5 of four and then continue the deposition until September 18, 1981,
6 at 8:30 a.m. at this same location.

7 MR. KATZ: I would like for the purposes of the record
8 to enter agreement with what Mr. Leach said, but would like to
9 object to the use of this testimony in either the patent office
10 or the courts until the plaintiffs have had an opportunity to
11 cross-examine the witness, Mr. Cox.

12 MR. GOLDENBERG: For myself, I really will take that
13 under advisement. I am not prepared to state one way or the
14 other what my position on that will be.

15 MR. LEACH: Hopefully it will not be a problem.

16 MR. GOLDENBERG: Mr. Cox might want his original docu-
17 ments returned to him. Therefore if the parties agree, copies
18 may be offered both PTO and the court in lieu of the original.

19 MR. WELSH: With particular attention to legibility
20 because they are kind of faint in some portions.

21 MR. GOLDENBERG: With particular attention to legi-
22 bility, if that is acceptable.

23 MR. KATZ: Yes. And of course subject to errors if
24 they be shown by any party.

25 MR. GOLDENBERG: We would ask Mr. Cox or his attorney

1 to preserve the originals, but we will actually offer copies.

2 (Schematic marked Greg Cox Exhibit 21.)

3 BY MR. LEACH:

4 Q I have a document which you produced this morning
5 that I have marked Greg Cox Exhibit 21.

6 Can you identify this document?

7 A This is a copy of the schematic of the El Toro inter-
8 face electronics provided to me by Mr. Schnayer.

9 Q I have some documents that are paper-clipped together
10 that you produced this morning.

11 Can you identify those documents?

12 A These are notes I made during the process of analyzing
13 the Exhibits 16, 20, and 21 in refreshing my memory as to how
14 the hardware and software operation of the El Toro game was
15 executed.

16 Q Did you have to review Exhibit 21 in determining the
17 operation of the program?

18 A To some extent, yes. It was useful in understanding
19 the input, output scheme and operation of the software.

20 Q Are any aspects of the software program hardware depen-
21 dent?

22 A Yes. Those dealing with the control of the hardware.

23 MR. KATZ: Excuse me. Are those marked as an exhibit,
24 the papers that were clipped together which you just referred?

25 BY MR. LEACH:

1 Q The papers which I have just handed you and which you
2 have just identified which were paper-clipped together, do these
3 papers contain a flow chart of the program?

4 MR. GOLDENBERG: I think if you mark them as 22 --
5 Would you mind if we put an A, B, C at the bottom of the page to
6 keep track of them that way.

7 MR. LEACH: Let's mark these papers as Exhibit 22.

8 (Flow Chart marked Greg Cox Exhibit 22-A through 22-K.)

9 BY MR. LEACH:

10 Q The documents which you previously identified as the
11 documents which were paper-clipped together have been labeled
12 as Greg Cox Exhibits 22-A through 22-K.

13 Would you examine these documents and tell me if any
14 of those documents represent a flow chart of the program?

15 A Exhibits 22-F, G, H, I, J, and K represent flow charts
16 of portions of the software program represented in Exhibits 16
17 and 20.

18 Q When you say it is a representation of the program of
19 Exhibits 16 and 20, do you mean to say that it is a representa-
20 tion of the flow chart of the program of Exhibit 20 after it
21 had been modified in accordance with the changes listed on
22 Exhibit 16?

23 A Yes.

24 Q I hand you a copy of a document which was among the
25 documents which you produced today which has been identified at

1 the top as Affidavit of Gregory Cox and ask if you can identify
2 this document?

3 A This is an affidavit I prepared in conjunction with
4 Mr. Schnayer on March 5, 1981, concerning various aspects of my
5 involvement with Cyan Engineering and the El Toro project.

6 MR. LEACH: Would you identify this document as
7 Exhibit 23?

8 (Affidavit marked Greg Cox Exhibit 23.)

9 A I'd like to note that on the second page there is
10 some hand-written inserts to paragraph six, and this may be a
11 preliminary copy of that affidavit. I am not certain that this
12 was the final version of the affidavit that was notarized.

13 MR. GOLDENBERG: We have a copy of what we believe
14 to be the final version, if he wants to compare.

15 (Affidavit marked Greg Cox Exhibit 24.)

16 BY MR. LEACH:

17 Q We have marked a document entitled Affidavit of
18 Gregory Cox as Greg Cox Exhibit 24, and I hand that to you for
19 comparison.

20 A Exhibit 24 does not contain the hand-written modifi-
21 cations to paragraphs five and six shown in Exhibit 23.

22 Q Whose handwriting are the modifications that are
23 shown in Exhibit 23?

24 A It is my handwriting.

25 Q Why did you modify the portion of Exhibit 23 that has

1 been modified on page two?

2 A To clarify those statements in paragraphs five and six
3 referring to the information involved in the El Toro game as it
4 may or may not have been divulged to any people outside the
5 company, specifically Intel.

6 Q Then are you saying that the version that is repre-
7 sented by Exhibit 24 you felt needed clarification, and that was
8 clarified on the hand-written portion of Exhibit 23? Do I
9 understand you correctly?

10 A Could you repeat the question, please.

11 (Question read back.)

12 A Yes.

13 BY MR. LEACH:

14 Q When was the modification made?

15 A I don't recall.

16 Q Do you know whether it was modified before or after
17 you signed the affidavit?

18 A It would appear to be afterwards because the Xeroxed
19 copy has my signature on it.

20 MR. KATZ: Objection to the question. The answer is
21 speculation.

22 BY MR. LEACH:

23 Q Who typed the affidavit?

24 A It was typed by a typing service in Wayne, New Jersey.

25 Q Does Exhibit 23 also contain a place for an insert?

1 A Yes, it does.

2 Q Does that indicate that there was an additional por-
3 tion of the affidavit which was intended to be inserted on
4 page two of Exhibit 23?

5 A Yes.

6 Q Was that portion actually inserted on the version of
7 what appears as Exhibit 24?

8 A No.

9 Q Do you have a copy of insert A?

10 A No, I don't.

11 Q Do you have any information or belief as to where a
12 copy of insert A might be today?

13 A No, I have no knowledge of where a copy might be.

14 Q Do you recall what insert A was?

15 A No, I do not.

16 Q Did you prepare insert A?

17 A Yes.

18 Q When you made these changes to your affidavit that are
19 indicated on Exhibit 23, was the affidavit retyped?

20 A I don't recall.

21 Q Did you send a copy of your changed affidavit to
22 Mr. Schnayer or anyone else at Fitch, Even, Tabin, Flannery &
23 Welsh?

24 A I don't recall.

25 Q Did you just change the affidavit and not tell anyone

1 about it?

2 A I don't recall.

3 Q Do you have a belief as to whether you told anyone at
4 Fitch, Even, Tabin, Flannery & Welsh that you had changed the
5 affidavit?

6 A I do not recall telling anybody that I changed the
7 affidavit.

8 Q Is it your testimony that you believe you changed the
9 affidavit and didn't tell anybody?

10 A I don't recall the circumstances that brought about
11 the change or what happened as a result of it.

12 Q In the changes that you made to the affidavit shown on
13 Exhibit 23, I notice that you have crossed out two sentences in
14 paragraph six.

15 Did you cross out those sentences because they were
16 incorrect?

17 A No. The reason for the changes was to clarify my
18 involvement in the communications between myself and other Cyan
19 employees. Specifically, Steve Mayer and Intel.

20 Upon rereading paragraphs five and six, it seemed to
21 me that it was clearly enough stated that although these dis-
22 cussions took place, they did not involve any of the implementa-
23 tion of the El Toro prototype design. And I wanted to clarify
24 those statements to read so that there was no question that any
25 discussion or involvements with Intel that I was a party to

1 specifically stayed away from the area of the implementation of
2 the El Toro machine.

3 Q So you were not present at any discussions with Intel
4 people that involved the implementation of the Intellec micro-
5 processor system?

6 A That's correct.

7 MR. KATZ: I object to the question though as mis-
8 characterizing what the witness has just said.

9 Could I have that --

10 MR. GOLDENBERG: The witness has answered the question.

11 MR. KATZ: But I would like to have that last question
12 and answer read back, please.

13 (Question and answer read back.)

14 MR. KATZ: Object to the question and answer as a
15 mischaracterization of the previous testimony in that the answer
16 of the witness to the second to the last preceding question was
17 referring to the El Toro prototype, and that characterization of
18 the testimony by Mr. Leach referred only to the Intellec develop-
19 ment system.

20 BY MR. LEACH:

21 Q Mr. Cox, you understand that I am not trying to mis-
22 characterize your testimony, but I am trying to determine what
23 the situation is.

24 A I misunderstood your last question referring to dis-
25 cussion of the Intellec.

1 If we could reread that, I would clarify my answer on
2 that question.

3 (Question read back.)

4 A I misinterpreted your question to mean that I was not
5 present at a discussion of the implementation of the El Toro
6 machine.

7 I was a party to discussions regarding the implementa-
8 tion and use of the Intellec system.

9 BY MR. LEACH:

10 Q With regard to pinball machines?

11 A No.

12 Q Does our discussion of the reason for striking the
13 last two sentences of paragraph six on Exhibit 23 assist you in
14 recalling what your changes were which were to be incorporated
15 in insert A?

16 A I still don't recall the specific changes that would
17 have been included in insert A, which is missing.

18 The affidavit is filed and as shown in Exhibit 24 is
19 accurate. The intent of those changes shown in Exhibit 23 was
20 only to provide additional clarification and not affect the
21 accuracy of those statements.

22 Q The Cyan facilities were located in an old hospital
23 building, were they not?

24 A Yes.

25 Q Was Cyan Engineering the only company or organization

1 that had offices located in that building?

2 A No. There were other companies who had facilities
3 within that building also.

4 Q Did that building have a lobby?

5 A There was an entrance area, but I don't specifically
6 recall a lobby.

7 Q Did the employees for each of the companies pass
8 through the entry area?

9 A Generally, yes. Although there were several entrances
10 and exits.

11 Q Was the entry area open to the employees of each of
12 the companies?

13 A The entry area of the building?

14 Q Yes.

15 A Yes.

16 Q Do you recall the other companies that were located
17 in the same building with Cyan Engineering in approximately
18 May of 1974?

19 A I recall two companies. One was a division of Litton,
20 and the other was a company called Eigen Systems, I believe.

21 Q Do you know how to spell it?

22 A E-i-g-e-n Systems.

23 Q Do you recall the names of any of the other companies
24 that were located in the same building with Cyan in May of 1974?

25 A No, I don't.

1 Q How many other companies were there in addition to
2 Litton Division and Eigen Systems?

3 A I don't know. At least one other.

4 Q So the total number of companies located in the same
5 building with Cyan was at least four, counting Cyan, is that
6 correct?

7 A Yes.

8 Q Do you have any recollection as to how many the total
9 number of companies was? Was it five or was it six, or what is
10 the extent of your recollection?

11 A I recall only those three specific companies and the
12 impression that there was at least one other. Three is all I
13 remember specifically.

14 Q Approximately how many people were located in the same
15 building?

16 A MR. KATZ: Objection to the question as lacking founda-
17 tion.

18 A I don't recall. I don't remember any more.

19 BY MR. LEACH: All right.

20 Q Do you recall a pinball game being located in the
21 entry of the building?

22 A No.

23 Q Do you recall a pinball machine being located anywhere
24 in the building, other than in Cyan offices?

25 MR. KATZ: Objection to the question as being

1 indefinite in respect to any particular time frame.

2 A No, I don't.

3 BY MR. LEACH:

4 Q Did the Cyan office have a lobby?

5 A There was an area which could have been considered a
6 lobby which contained Jodie Sperry's desk and Ed Schleeter's
7 drafting table.

8 Q This area which I will refer to as the lobby then, do
9 you recall a pinball machine ever being located in this lobby?

10 A No.

11 Q Do you recall any visitors at Cyan ever playing the
12 El Toro pinball machine?

13 A No.

14 Q I thought you testified earlier that you believed
15 people played the pinball machine at the open house?

16 A I would clarify that.

17 Other than the occasion of the open house and the
18 visit by the Atari people, I don't remember any occasion where
19 visitors played the El Toro machine.

20 MR. KATZ: I would like the record to reflect the
21 fact that Mr. Goldenberg has passed a note to Mr. Leach and has
22 in the past here today suggested other questions.

23 I raise that as a matter of record only to the
24 question of whether or not Mr. Goldenberg should have the right
25 to conduct an examination coextensive with this particular

1 topic covered by Mr. Leach, which we would object to.

2 MR. LEACH: I disagree with your assumption that
3 Mr. Goldenberg has suggested questions to me, or that if he has,
4 I have asked them.

5 MR. GOLDENBERG: Mr. Goldenberg, speaking for himself,
6 says that he will conduct whatever examination he believes to
7 be appropriate, representing the interest of his client in this
8 matter.

9 MR. KATZ: No matter what?

10 MR. GOLDENBERG: You could almost say that.

11 MR. LEACH: And also, we did not ask to be sued
12 in the same lawsuit.

13 BY MR. LEACH:

14 Q Do you recall whether this lobby area had glass walls
15 in any portion of the area?

16 A I don't recall.

17 Q Do you recall whether someone in the building could
18 see into the Cyan Engineering offices through a glass wall?

19 MR. KATZ: Object to the question as lacking founda-
20 tion, based on his previous answer.

21 A During the time I was employed at Cyan Engineering
22 from March to August of 1974, it's my recollection that there
23 was no way which you could gain visibility into the Cyan facili-
24 ties from the hallway where the entry door -- into what we're
25 calling the lobby area existed.

1 BY MR. LEACH:

2 Q Was this lobby area closed off or partitioned off
3 fom the rest of the Cyan offices so that someone in the lobby
4 area could not gain access into the remaining of Cyan Engineer-
5 ing facilities?

6 A I believe so.

7 Q Was there a wall and a door?

8 MR. KATZ: Object to the question.

9 Could I hear it again?

10 (Question read back.)

11 MR. KATZ: Object to the question as indefinite.

12 BY MR. LEACH:

13 Q Between Jodie Sperry's desk and Ed Schleeter's draft-
14 ing area and the remaining of the Cyan Engineering facilities?

15 A To the best of my recollection, during the time I
16 was employed at Cyan Engineering there was three offices that
17 had doorways onto the lobby area.

18 In addition to those offices there were -- was a lobby
19 area which had access through a doorway to the lobby area.

20 I do not specifically recall if there were any glass
21 partitions or whether there was direct visibility, if those
22 doors were closed into those office areas and the laboratory
23 areas.

24 Q Would you draw a representation of the floor plan at
25 the Cyan Facilities as you remember it?

1 A Yes.

2 That would be the floor plan as best I can recall it.

3 (Floor plan marked Greg Cox Exhibit 25.)

4 (Discussion held off the record.)

5 MR. KATZ: Let the record show that Mr. Goldenberg
6 has had a discussion now off the record with Mr. Leach with
7 respect to the floor plan drawing which was just prepared by
8 the witness.

9 BY MR. LEACH:

10 Q Would you please label the area that you have been
11 referring to as the lobby area with my ink pen so it would be
12 distinguished from the rest of the drawing that you have thus far
13 drawn?

14 A Would you like me to outline it?

15 Q That would be fine. Any way which is convenient.

16 MR. KATZ: Could you indicate that in a broken line
17 because in our copies we won't be able to tell the difference
18 between the pencil and pen.

19 MR. LEACH: Why don't we make an exception in this
20 case and put the original in the transcript?

21 MR. KATZ: It won't make any difference. Everybody
22 is going to be working with copies, and no one will know what
23 we are talking about.

24 BY MR. LEACH:

25 Q So you have circled in pen the area including the

1 portion of the floor plan that you have labeled drafting area,
2 and the portion of the floor plan that you have labeled Sperry's
3 desk and labeled this in ink as lobby area, is that correct?

4 A Yes.

5 Q During the course of the Cyan Engineering open house,
6 did you have occasion to go back into the lab area at the far
7 end of the Cyan Engineering offices?

8 A I don't recall.

9 Q Do you recall whether you went into any of the three
10 areas that you have labeled as office area during the course of
11 the Cyan Engineering open house?

12 A I don't recall my specific actions and locations
13 during the open house.

14 One of those office areas was mine, and I most certainly
15 was in that and was probably also in the area called the lobby
16 and probably in one or both of the laboratory areas.

17 But I don't have specific recollection of where I was
18 at any given time during the tour in the open house.

19 Q If you were back in the laboratory at the far end of
20 the office, could someone have walked in and out of the door
21 without you being aware of his presence at the Cyan open house?

22 MR. KATZ: I object to the question as calling for pure
23 speculation from the witness.

24 Objection also on the basis that it is a hypothetical
25 question, and it is also seeking argumentative type of testimony

1 from the witness.

2 The witness is here to provide facts and not to
3 speculate as to what was possible and what wasn't possible.

4 MR. GOLDENBERG: Mr. Katz, is it necessary for you to
5 pose on the table in that fashion?

6 MR. KATZ: In order to see this drawing. I can hardly
7 see it if I am sitting in my regular chair.

8 MR. GOLDENBERG: Your present objection has nothing
9 to do with the drawing.

10 MR. KATZ: He was pointing to the lab area in the
11 drawing. Mr. Leach was.

12 A I would not want to speculate on whether it was pos-
13 sible for anyone to enter or exit the Cyan facilities if someone
14 else including myself or any other individual was at some
15 specific location within those facilities.

16 Anybody can look at the floor plan and draw their
17 own conclusions.

18 BY MR. LEACH:

19 Q I am not aware of what portion of the walls were
20 glass or not so I imagine if someone were standing back here in
21 the far left lab portion, would it be possible to visually
22 observe an individual coming in and out of the door?

23 A I also stated that I don't have specific recollection
24 of which if any walls had glass partitions in them. And for
25 that reason I can't recall and have no opinion at this point

1 whether an individual on the far lab area could visibly see the
2 front door or not.

3 Q So if the El Toro machine were located in either one
4 of the labs, you don't know one way or the other whether some-
5 one would be able to visually observe the El Toro machine from
6 the doorway or the hall or the lobby area, is that correct?

7 A Yes.

8 MR. KATZ: May I enter a belated objection to that
9 last question as posing a hypothetical question to the witness
10 who answered the hypothetical question.

11 BY MR. LEACH:

12 Q Where was the El Toro machine visibly located on the
13 floor plan during the Cyan Engineering open house?

14 A I don't recall where it was specifically located dur-
15 ing the open house.

16 At various times during my employment with Cyan it
17 was located in an office area adjacent to the hallway, which I
18 will label office one, if that's --

19 Q Whose office was that?

20 A That was my office.

21 Q You can label that as Cox office, if you like.

22 A (Marking.)

23 Q So at various times the El Toro machine was located
24 in the portion that we have labeled as Cox office, is that
25 correct?

1 A Yes. And at other times it was located in the labora-
2 tory adjacent to the lobby.

3 Q Why don't you label the laboratory areas as lab one
4 and lab two?

5 A (Marking.)

6 Q So then at various times it was located in the
7 area labeled as lab one, is that correct?

8 A Yes.

9 Q During the Cyan Engineering open house, was the door
10 to the Cyan Engineering offices kept locked?

11 A I don't recall.

12 Q Did one of the office area serve as Steve Mayer's
13 office?

14 A Yes.

15 Q Would you please label that as Mayer's office?

16 A (Marking.) To the best of my recollection, Ron Milner
17 was also in that office.

18 Q Why don't you put Milner's name on that area?

19 A (Marking.)

20 Q Did you recall the individual who occupied the third
21 office area that is not yet labeled?

22 A Larry Emmons.

23 Q Would you please write Emmons' name on that office
24 area?

25 A (Marking.)

1 Q You have labeled an area of the floor plan as porch.
2 Was this porch area open to the outside?

3 A By means of a door or an external exit?

4 Q Yes.

5 A No. There was no door, no external exit or entrance.
6 There were windows, but only windows.

7 Q So was there no access to the outside from this porch?

8 A Not to the best of my recollection, no.

9 Q Unless you jumped through a window?

10 A Right.

11 Q When you were located in your office, which is
12 labeled Cox office, during the Cyan Engineering open house, was
13 it possible for you at all times to observe every individual
14 that came in and out of the door?

15 A No.

16 Q Was Larry Emmons' wife at the Cyan Engineering open
17 house in May or June of 1974?

18 A I am not certain. I think she probably was, but
19 I don't have a specific recollection.

20 Q Was Mike Rodgers' wife at the Cyan Engineering open
21 house?

22 A I don't recall.

23 Q Did Jodie Sperry have a spouse at the Cyan Engineer-
24 ing open house?

25 A I don't recall.

1 MR. KATZ: Objection to this question and the pre-
2 ceding question on the ground of lacking foundation.

3 BY MR. LEACH:

4 Q Was Jodie Sperry married to your knowledge?

5 A Yes, she was.

6 Q Did anyone bring a girlfriend or a boyfriend to the
7 Cyan Engineering open house?

8 A I don't recall.

9 Q Was there anyone in Cyan Engineering that was not
10 married at the time of the open house?

11 A Yes.

12 Q Who do you recall was not married at the time of the
13 Cyan Engineering open house?

14 A There was a student who was working as a technician
15 for the summer. I don't recall his name, but I do recall that
16 he was single.

17 Q Do you recall whether he brought a friend or a date
18 or anyone else with him to the Cyan Engineering open house?

19 A I don't recall. I think I should clarify that. I'm
20 using the term open house to mean the total visit -- total
21 period of the visit by the Atari people which included a tour
22 of the Cyan facilities and a picnic at a park in Nevada City,
23 I believe.

24 And it would probably clarify a situation to distin-
25 guish between what transpired at the picnic and what transpired
at

1 at the facility at Cyan and the hospital building.

2 I don't have a specific recollection of the wives of
3 any of the Cyan Employees being at the Cyan facilities. But I
4 do recall the wives of Steve Mayer and Ron Milner being at the
5 picnic.

6 Q Is it just that you don't recall one way or the other
7 whether they were at the Cyan facilities?

8 A Yes.

9 Q Do you recall how many employees of Atari were present
10 at the Cyan Engineering open house?

11 A I don't remember the specific number. It was some-
12 where in the neighborhood of about a dozen people. Twelve to
13 eighteen people.

14 Q That is from Atari?

15 A Yes.

16 Q How many additional people were there if you included
17 wives or husbands?

18 A Well, I mean to state that the total group of visitors
19 was 12 to 18 people, including Atari employees and their fami-
20 lies.

21 Q Approximately how many Atari employees do you recall
22 at the Cyan Engineering open house?

23 A Something in excess of half the total number because
24 I don't believe all of the people were accompanied by their
25 wives.

1 Q What number would that be? Six to ten?

2 A Something in that neighborhood, yes.

3 Q Approximately how many Cyan Engineering employees
4 were present at the Cyan Engineering open house?

5 A I believe all of the employees were both at the facili-
6 ties tour and at the picnic. And there were a total of eight
7 or nine employees.

8 Q Approximately how many wives or spouses of Cyan
9 employees were present at the Cyan Engineering open house, and
10 if the number differs with respect to the facilities or picnic,
11 please tell me.

12 MR. KATZ: Objection to the question as indefinite.

13 A As I stated before, I don't specifically recall any
14 Cyan employees' wives or families being present in the facility
15 during the tour. And I have specific recollection of two wives
16 and one child. And I'm sure there were others, but I don't
17 remember how many others.

18 That's two wives and one child in addition to my own
19 wife and child.

20 BY MR. LEACH:

21 Q What was the approximate age of the other child that
22 you specifically recall being present?

23 A Approximately my daughter's age, four or five, because
24 they were playing together.

25 Q Do you recall the child's name?

1 A No, I do not.

2 Q Do you recall who the child belonged to?

3 A I believe it was Larry Emmons' child.

4 Q You say that you believe it was Larry Emmons' child.

5 I am curious about the extent of your recollection. Are you
6 fairly certain?

7 MR. KATZ: Object to the question for lack of found-
8 dation.

9 A I do not have specific recollection whose child it
10 was. However, I do recall that Larry Emmons had children about
11 my daughter's age. And it is an assumption on my part that
12 that's who the child was.

13 MR. KATZ: I would like to state a general objection
14 here to this general line of questioning.

15 I think you are belaboring the details that can't
16 possibly be considered relevant to any issue in this case. In
17 view of the time problems where we are having difficulty enough
18 trying to complete this deposition, I would request that you
19 move into or through or over areas of inquiry.

20 BY MR. LEACH:

21 Q So how many total people would that be at the Cyan
22 Engineering open house?

23 MR. KATZ: Objection to the question as indefinite.

24 MR. LEACH: Let the record reflect that Mr. Welsh
25 whispered the objection to Mr. Katz before he made the

1 objection.

2 BY MR. LEACH:

3 Q Do you understand the question?

4 A Yes, I do. During the tour of the Cyan facilities
5 there were approximately 12 to 18 personnel in attendance who
6 were Atari employees or their families.

7 In addition there were some eight or nine Cyan Engin-
8 eering personnel present.

9 All of those people were present at the picnic with
10 the addition of some wives and children. And the exact number
11 I do not recall. Somewhere between three and six I would esti-
12 mate. That would be three or six excluding my own family,
13 which would be an additional two. So make that five to eight.

14 Q Additional people present at the picnic?

15 A Yes.

16 Q If there were 12 to 18 personnel from Atari at the
17 tour plus eight or nine Cyan personnel at the tour of the
18 Cyan Engineering facilities, that occurred at the Cyan Engineer-
19 ing open house, what is the total number of people who were
20 present at the Cyan Engineering open house at the tour of the
21 facilities?

22 MR. KATZ: Objection to the question as being totally
23 irrelevant.

24 A I don't recall the specific number of people that
25 were at the facilities tour. I have given you an estimate of

1 my best recollection of those events. And the total of 12 to
2 18 plus eight or nine is 20 to 29.

3 BY MR. LEACH:

4 Q Is your recollection of those events hazy?

5 A Yes.

6 Q I refer you to Exhibit 24, paragraph 13, in which you
7 indicated that there were approximately 20 people present to
8 view the Cyan Engineering facilities.

9 Is that number correct or incorrect?

10 A It says approximately 20. Approximately 20 is correct
11 to the best of my recollection.

12 Based on the addition we did here, we came up to a
13 number of 20 to 29, which is approximately 20. On the low end.

14 Q So we can clarify that then as to include the range
15 between 20 and 29, is that correct?

16 A Yes.

17 Q Was Joel Miller present at the Cyan Engineering open
18 house?

19 A I don't recall.

20 Q Do you recall testifying earlier that you were
21 specifically warned about confidentiality and secrecy by Steve
22 Mayer?

23 A Yes.

24 Q Is that the event that is referred to in paragraph
25 seven, appearing on page three of Exhibit 14?

1 A No. The event referred to in paragraph seven would
2 have been relating to conveying basic company policy to me as
3 a new employee, which would have been a separate event from a
4 discussion of confidentiality and secrecy as relating to the
5 tour and the open house.

6 The subject of confidentiality and proprietary infor-
7 mation was an ongoing concern within the company and was
8 periodically discussed and reinforced by both Steve Mayer and
9 Larry Emmons.

10 Q Do you recall a telephone conversation that you and
11 I had earlier in which you told me at the time that you did not
12 remember one way or the other about anything being said about
13 confidentiality with regard to the Cyan Engineering open house?

14 A No, I don't recall the specifics of that conversa-
15 tion, no.

16 Q Do you recall saying to me in word or substance that
17 you did not recall one way or the other about anything being
18 said with regard to confidentiality at the Cyan Engineering
19 open house?

20 A I don't recall.

21 Q Is it your testimony that it is incorrect, that
22 nothing was said one way or the other regarding the confi-
23 dentiality of the Cyan Engineering open house?

24 MR. KATZ: Can I have that question read back,
25 please?

1 MR. LEACH: Let me withdraw that question.

2 BY MR. LEACH:

3 Q Do you now disagree with the statement that to your
4 recollection nothing was said one way or the other about the
5 confidentiality or secrecy with regard to the Cyan Engineering
6 open house?

7 MR. KATZ: Objection to the question as lacking foun-
8 dation and assuming something which is contrary to what he had
9 already testified to and putting a new question to this witness
10 to agree or disagree with.

11 I think it is clearly an improper question. The
12 witness never stated that he actually said that to you.

13 A Let me characterize the environment of secrecy and
14 confidentiality and relate it to these issues.

15 Basically, immediately upon being employed by Cyan
16 Engineering I was advised that all work done there was confi-
17 dential in nature and was not to be divulged outside of the
18 immediate premises and the employees of the company.

19 Q That attitude was prevalent in all the work that was
20 done there. The drawings were kept in locked cabinets. There
21 were burglar alarms that were activated during nonworking
22 hours. All the information was very carefully guarded and pro-
23 tected

24 There were periodic discussions about the requirements
25 for confidentiality and secrecy. There were discussions prior

1 to the open house dealing with the fact that there would be
2 people from Atari there, that the Atari employees were privy
3 to the information and to the work being done at Cyan Engineer-
4 ing and were aware of the policy of confidentiality that
5 existed at a corporate level within Atari as well as Cyan
6 Engineering.

7 I can't state from specific recollection that there
8 was an event during which it was specifically stated to all
9 employees that we were having visitors and that we were to be
10 reminded that all of this information was confidential.

11 I guess an accurate characterization to my recollection
12 would be that it was an ongoing policy which was periodically
13 reinforced, which I recall being reinforced in the neighbor-
14 hood of time of the tour with regard to the fact that there
15 would be nonemployees there, the families of Atari members,
16 and that for that reason we should be cautious about what
17 information was disseminated.

18 BY MR. LEACH:

19 Q Do you recall our telephone conversation which took
20 place on or about June 25 of this year?

21 A I don't recall the specific date of it.

22 Q Do you remember anything to the contrary, that it was
23 not June 25?

24 A No.

25 Q Do you recall that it was in the latter part of June?

1 A I don't recall the specific date or period in time.
2 That sounds like a reasonable time period.

3 Q Do you agree that our telephone conversation was
4 approximately 2-1/2 months ago?

5 A Yes.

6 Q How long ago was the Cyan Engineering open house?

7 A Just in excess of seven years.

8 Q Does it seem strange to you that you have difficulty
9 remembering a telephone conversation 2-1/2 months ago yet can
10 remember things that you were told seven years ago?

11 MR. KATZ: Objection to the question as calling for
12 a hypothetical answer to questions, argumentative because
13 "Does it seem strange?"

14 I think that is a very improper question.

15 MR. LEACH: I will withdraw the question.

16 BY MR. LEACH:

17 Q You indicated earlier that the porch that is drawn
18 in Exhibit 25 had windows on it, is that correct?

19 A To the best of my recollection, yes.

20 Q Were the offices of Cyan Engineering air-conditioned?

21 A I believe so, yes.

22 Q Were the doors to the porch ever left open during the
23 course of the day to your recollection?

24 A Any time during the period I was employed there?

25 Q Yes.

1 A During the day when people were active, working in
2 the area in --

3 Q At any time.

4 A I don't have a specific recollection one way or the
5 other. But I would assume that they were left open on cool days
6 -- windows would be open for ventilation if the air-conditioner
7 wasn't needed.

8 Q Would it be possible standing outside the porch area
9 to see into the area marked lab one through the windows if the
10 doors were open to the porch?

11 MR. KATZ: Could I hear that question again?

12 (Question read back.)

13 A Outside of the porch area?

14 BY MR. LEACH:

15 Q Yes.

16 A Not if you were standing on the ground because the
17 offices were not on ground level.

18 Q What level were the offices on?

19 A I don't recall specifically. I believe it was either
20 the second or third floor of the building.

21 Q Did Cyan Engineering have an entire floor of the
22 building?

23 A No. We only occupied the small set of rooms you see
24 in the drawing.

25 Q Do you recall someone who was named Bob who was at

1 the Cyan Engineering open house?

2 A I remember a Cyan employee named Bob who was -- I
3 believe that was the name of the technician I referred to who
4 was the student.

5 Q Do you recall that after our telephone conversation
6 on June 25 that I called you back on the morning of June 26?

7 A I don't remember the specific date, but we did have
8 more than one conversation on the phone.

9 Q Do you recall that after we had talked on the tele-
10 phone one evening that I called you back the following morning?

11 A I don't specifically recall that it was the next
12 morning, but I recall that it was within several days at the
13 most.

14 Q Do you recall that I asked you if you would prepare
15 a supplemental affidavit or declaration to be filed in the patent
16 office setting forth some additional testimony that I desired
17 to have before the patent and trademark office?

18 A I remember that you had some specific questions you
19 wanted to have me answer. I don't remember a specific request
20 for an affidavit.

21 Q Do you recall telling me any conditions that would
22 have to be met before you would meet with us for preparation
23 of an affidavit or declaration?

24 A I believe in our last conversation I stated that
25 agreement by Mr. Schnayer's firm and your firm and myself as

to a date would be required or a subpoena.

Q Do you recall telling us that you did not wish to discuss the matter any further unless one of Bally's attorneys was present?

MR. KATZ: Objection to the question as leading.

A Yes, I recall that.

BY MR. LEACH:

Q Do you also recall that you indicated that you would prefer to proceed with a deposition rather than proceed informally with the preparation of an affidavit or declaration?

MR. KATZ: Objection to the question as leading.

A Would you repeat the question, please.

(Question read back.)

A No, I don't recall that I would have preferred a deposition. Either a deposition or an informal session would have been acceptable as long as a Bally representative -- let me clarify that. Representative of Fitch, Even, Tabin, Flannery & Welsh had been represented at that informal session.

BY MR. LEACH:

Q You mentioned a consulting arrangement earlier.

Do you have a consulting arrangement with Fitch, Even, Tabin, Flannery & Welsh?

A Yes.

Q You are being paid on an hourly basis for your time in connection with that arrangement, are you not?

1 A Yes.

2 Q I hand you Exhibits 9, 10, 11, and 13.

3 Do these exhibits relate to your charges for your
4 consulting services in connection with the arrangement you
5 have with the Fitch, Even firm?

6 A Yes.

7 Q What is the total amount that you have billed Fitch,
8 Even for to date?

9 A I don't know the exact amount. It's in the neighbor-
10 hood of 2200 to \$2300.

11 Q What is the hourly rate that you are billing your
12 time on?

13 A \$75 an hour.

14 Q Have you been billing your time at \$75 an hour through-
15 out the period with which you have been consulting with Fitch,
16 Even?

17 A No.

18 Q With what other rate have you been charging during the
19 course of your consulting arrangement with Fitch, Even?

20 A I had been billing at a \$50 an hour rate until I
21 made the move from New Jersey to here in State College.

22 Q What was the date approximately of that move?

23 A The first week in April.

24 Q Is your arrangement with the \$75 an hour rate to be
25 continued indefinitely, or is that just a rate for a special

1 period of time?

2 MR. KATZ: Objection to the question as alternative.

3 A I haven't given any thought as to the duration of the
4 rate. Have no plans of changing that.

5 BY MR. LEACH:

6 Q Do you charge a different rate depending on what you
7 are doing?

8 A No.

9 MR. KATZ: Objection to the question as indefinite.

10 BY MR. LEACH:

11 Q Are you charging your consulting rate during the time
12 that you spend here today?

13 A Yes.

14 Q When did you first have occasion to speak with
15 Mr. Novak?

16 A Approximately 2-1/2 to 3 weeks ago.

17 Q Do you remember the date by any chance?

18 A No, I don't.

19 Q Did he call you or did you call him?

20 A I called him.

21 Q How did you get Mr. Novak's name and/or telephone
22 number? Was it given to you by someone else?

23 A Yes, it was.

24 Q Who gave you Mr. Novak's name and telephone number?

25 A Mr. Schnayer.

1 Q What did Mr. Schnayer say to you in words or sub-
2 stance on the occasion which he gave you Mr. Novak's name and
3 telephone number?

4 MR. NOVAK: I am wondering, what are you getting at
5 here?

6 MR. LEACH: Mr. Katz had stated earlier that Mr. Cox
7 was a third-party witness. All I want to do is establish what-
8 ever facts exist between your representation of Mr. Cox and the
9 attorneys who are representing Bally Manufacturing Corporation.

10 MR. WELSH: Could you speak up? I am having a little
11 trouble hearing you.

12 A The events that transpired were that I am fairly new
13 in the area. I've lived here approximately five months, do
14 not have a local attorney.

15 An attorney was referred to me by some of the people
16 that I work with. Mr. Schnayer suggested that it would be
17 wise to check if that attorney had the necessary background in
18 depositions, subpoenas, and law of this sort to be able to
19 adequately represent me at these proceedings.

20 He checked into that individual's background and
21 found that he did not have an adequate background to handle
22 those transactions and gave me several names of attorneys in
23 the area that did have the necessary background.

24 I contacted one of those attorneys and retained him
25 to represent me in this matter. He had scheduled a fishing

trip to Canada with all the other members of his firm and had left the day before the subpoena arrived calling for a deposition on the 1st of September.

I had scheduled a business trip overseas on that day and could not contact the attorney I had retained at that point or any of his other associates to affect a delay in this deposition.

So I went back to Mr. Schnayer and asked for some additional names of attorneys that were experienced in proceedings of this nature in the area, at which time he gave me Mr. Novak's name.

And I got in touch with Mr. Novak, and we discussed the matter. And I retained him.

BY MR. LEACH:

Q Are you paying Mr. Novak's fees, or is someone else paying them?

A I am paying them.

Q Are you being reimbursed for Mr. Novak's fees?

A Yes, I am.

Q By who?

A By Fitch, Even, Tabin, Flannery & Welsh.

Q So it is fair to say that indirectly Fitch, Even, Tabin, Flannery & Welsh is indirectly paying Mr. Novak's fees?

MR. KATZ: Objection to the question as to whether that is a fair characterization.

1 The witness isn't required to characterize his own
2 testimony. He has already stated the relationship.

3 MR. NOVAK: I think that would be for the examiner
4 to decide that.

5 A Mr. Novak is here as my attorney representing me
6 and no other individual at this proceeding. And I will be
7 paying his fees whether or not I am recompensed by any other
8 individuals. He is representing me solely in this matter.

9 BY MR. LEACH:

10 Q Just so we don't confuse the record, you are being
11 reimbursed by Fitch, Even for his fees, is that correct?

12 A I stated that, yes.

13 Q During the luncheon recess, did you have lunch with
14 Mr. Katz and Mr. Welsh?

15 A And Mr. Novak, yes.

16 Q Did you discuss any matters relating to the deposi-
17 tion today?

18 A We had some superficial discussion, about the pro-
19 ceedings this morning.

20 Q MR. LEACH: Why don't we take a short recess at this
21 point?

22 (Recess.)

23 AFTER RECESS

24 BY MR. LEACH:

25 Q I show you again Exhibit 8 with your notes on it that

1 I believe indicated that you were going to examine the software
2 listing and look for the program response to stuck switches
3 and multiple closures.

4 So far am I right?

5 A Yes.

6 Q Then you received documents from Mr. Schnayer, is
7 that correct?

8 A I'm not certain as to the timing of what would have
9 preceded the other. I may have received the documents before
10 I was requested to look into those conditions.

11 Q So at some point in time you received documents from
12 Mr. Schnayer.

13 I place before you the exhibits that we have previously
14 marked as 22, 21, 20, 16, 15, 17, 18, and 19, and ask you to
15 tell me what was the first thing you did when you started anal-
16 yzing the program looking for a program response to stuck
17 switches or multiple closures?

18 A The first thing I did was refresh my memory on how
19 the software operated by using Exhibits 16 and 20 and 15.

20 I reviewed the software program first, understanding
21 how the patches contained in Exhibit 16 fit into Exhibit 20,
22 which resulted in Exhibits 19, 18, and 16, which essentially
23 gave me a road map as to the way the modifications of Exhibit 16
24 were incorporated into Exhibit 20.

25 Q You produced Exhibit 17, 18, and 19 during the course

of your

1 of your analysis, did you not?

2 A Yes.

3 Q Are Exhibits 17, 18, and 19 necessary to transform
4 the program listing that is listed in Exhibit 20 to the version
5 that incorporates the modifications contained in Exhibit 16?

6 MR. KATZ: Objection to the question as indefinite.

7 Necessary to whom? There is no antecedent for
8 necessary.

9 A The terminology is somewhat vague, but I use them
10 only in the sense of clarifying my understanding of how those
11 changes were incorporated within Exhibit 20.

12 They are not necessary. They are not an integral
13 part of any of those documents, but only serve to organize my
14 thoughts as I was evaluating the software structure.

15 BY MR. LEACH:

16 Q Referring to Exhibit 17, what did you mean to indicate
17 by the heading patches by program statement order?

18 A I was trying to put those changes into numerical
19 sequence as they were implemented within Exhibit 20 so that I
20 could follow them with a particular sequence order.

21 Q Are the changes not in numerical sequence in
22 Exhibit 16?

23 A No, they are not.

24 Q Referring to Exhibit 18, what did you intend to indi-
25 cate by the heading patch allocation summary?

1 A This is a basic cross-reference between the changes
2 in Exhibit 20 that are shown hand-written in and those
3 instructions in Exhibit 16 in the separate document.

4 In Exhibit 16 there are certain changes which were
5 incorporated which were later deleted or changed. The infor-
6 mation in Exhibit 16 was developed in chronological fashion
7 during the process of debugging and testing the pinball game.
8 And these changes were made as problems or modifications were
9 found necessary to the basics of our program, so that they had
10 would address problems in a chronological sequential order.

11 And sometimes changes to those were necessitated
12 based on discovery of other problems at a later time.

13 So Exhibit 18 was a way to translate this chronologi-
14 cal sequence of Exhibit 16 into a numerical sequence and fit
15 that into Exhibit 20 so I could understand the final version
16 of the changes with all corrections in them resulting from
17 Exhibit 16.

18 Q Referring to Exhibit 19, what did you intend to
19 indicate by the title or heading patch area allocation?

20 A The basic program as originally written and shown in
21 Exhibit 20 before the hand-written modifications were made
22 occupy a certain portion of the memory of the Intellec machine.

23 At the end of that memory area, there was additional
24 memory available which was used to generate patches or correc-
25 tions to the program.

So additional statements were put in a sequenced order in Exhibit 19 for me to clarify the use of that memory space, following the basic program memory area defined by Exhibit 20

Q Exhibit 20 contains notations that were apparently made prior to the time that the document was photocopied.

Do you recognize the handwriting of those changes?

A Yes. That's my handwriting.

Q Were those notations made to the document which we have labeled as Exhibit 20 prior to the time that you received the document from Mr. Schnayer?

A Yes.

Q On the original copy of Exhibit 20 there are also some pencil notations.

When were those pencil notations made?

A Those were made during the time I was analyzing the program and evaluating its performance in February and March of this year.

Q That is February and March of 1981?

A Yes.

Q Referring to Exhibit 16, are there any changes in the program of Exhibit 20 which had already been indicated on the document before you received it from Mr. Schnayer which come from a position below line 26 on Exhibit 16?

A Would you repeat the question, please.

(Question read back.)

A Yes.

BY MR. LEACH:

Q Earlier you testified that the changes from Exhibit 16 contained in lines 12 through 25 had not been previously indicated on Exhibit 20, is that correct?

A No. What I stated was that we identified two areas, A and B on Exhibit 20, and showed where those changes were reflected in Exhibit 16.

In fact those changes are made on Exhibit 20 in pencil and were made after I received the document. However, those same changes are reflected on Exhibit 20 and were made on that document prior to my receipt of it. And those changes are on the first page under the area which has a taped piece of paper on it.

Q You are going to circle it and mark it as C, I hope?

A Yes. (Marking.)

Q I note in your pencil notation you have penciled in on Exhibit 20 a notation that certain statements within the area that you have just indicated as area C were not on the patch sheet, is that correct?

MR. KATZ: Were not on the what?

MR. LEACH: Patch sheet.

A Yes. Let me explain the chronology of the events. The basic document of Exhibit 20 without the penciled

notations was created during the time I was employed at Cyan Engineering. Prior to the time I left -- prior to August of 1974, those changes shown in area C were penciled in after the program had been tested and debugged with the inclusion of the patches shown in Exhibit 16.

What is shown in Exhibit C is --

MR. GOLDENBERG: You mean area C.

A What is shown in area C is a different set of instructions performing the same function as that shown in part of area A.

BY MR. LEACH:

Q Wasn't the patch log of Exhibit 16 supposed to represent or reflect the exact instructions that are placed into the program as it is modified?

A Yes. And that was the case. When the hand-written notations shown in area C were generated, the patches shown in area -- in Exhibit 16 were slightly modified using a more optimum mix of instructions to reduce the amount of memory required to affect the same function.

Q What's shown in all of the hand-written notations, whether they be in pencil or in Xerox form, in Exhibit 21 were not those instructions which were put into the computer. They are a summary of those instructions as extracted from Exhibit 16, and they were inserted at those points in Exhibit 20 so that it was convenient to see the flow of all of

the instructions in sequence in the program.

Q When you say they were inserted, you mean that you inserted them during the course of your analysis?

A No. I inserted them during the periods of developing the software program in 1974.

Q Including the pencil notations?

A No. The pencil notations were made in February and March of this year as I was reviewing the program and trying to understand it again after not seeing it for seven years.

MR. KATZ: Are we going to get copies now of the documents that were marked as exhibits here?

MR. LEACH: I will see if we can arrange to have some one copy them, and if you have time to wait around --

MR. KATZ: Do you know how long it will take?

MR. LEACH: I will have to ask.

MR. GOLDENBERG: Are all the exhibits here?

MR. KATZ: Maybe what we can do is make arrangements for --

MR. LEACH: Maybe these people will send you a copy.

MR. GOLDENBERG: I am troubled by that.

MR. KATZ: What?

MR. GOLDENBERG: Either leaving them here --

MR. NOVAK: Do you trust Mr. Williams to take custody of those? He is the attorney here. He can make copies and mail them, if that would be satisfactory. Or do you want them

today?

MR. KATZ: No. Is that okay, Don?

MR. WELSH: Yes. I think if they can be made today yet perhaps --

MR. KATZ: And they can send them out, and we can get them probably by the beginning of next week we'll have them.

MR. GOLDENBERG: I think that is quite a burden to put on a local counselor's office.

MR. WELSH: Well, we are suffering from previous history.

MR. GOLDENBERG: I don't think there is a great deal of previous history.

MR. WELSH: Then we will wait and get them now.

MR. GOLDENBERG: Okay. You wait. I'll go to the airport.

MR. KATZ: The problem I have here is as we already noted, we have been requesting for at least the last three weeks for permission to see the El Toro physical exhibit which was marked as an exhibit by Gottlieb several years ago at the Atari depositions, and we can't even find anybody that will tell us who has it or where it is, in the deposition that Williams took of Mr. Winter.

MR. GOLDENBERG: Mr. Katz, this is unnecessary now. If you want to taper the record with that kind of foolishness, you go ahead and do it, but I don't have to sit and listen to

it.

MR. LEACH: Let's go off the record.

MR. KATZ: No. I don't want to go off the record.

MR. LEACH: Then you can pay for this part of the transcript.

MR. KATZ: Okay. I'll pay for it.

I say that this is one of the problems we have had. You had Mr. Winter make a drawing during his deposition. It was marked as an exhibit. We were to get a copy of it. You took custody of it, and we never got it.

When we asked for it, we were told by your associate that it was lost.

MR. GOLDENBERG: I don't know that I took custody of it. I don't know that at all.

MR. KATZ: You took custody of it, and it was lost. And we have not been able to get a copy.

MR. GOLDENBERG: I hear what you say. I trust you hear what I say, although I doubt that.

MR. KATZ: So I would like to have the witness retain custody of it or perhaps the court reporter could take it.

MR. GOLDENBERG: If you want to leave them with Mr. Novak and charge Mr. Novak with the responsibility of making copies and forwarding them to us, I certainly accept that.

(Whereupon, the deposition was concluded at 3:55 p.m.)

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Gregory Cox

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STATE OF PENNSYLVANIA:
COUNTY OF CENTRE : SS.

I, Laurie V. Blackmon, a Reporter-Notary Public
authorized to administer oaths and take depositions in the trial
of causes, and having an office in Harrisburg, Pennsylvania, do
hereby certify that the foregoing is the testimony of
GREGORY COX

taken by Defendants at the offices of Miller, Kistler &
Campbell, Inc., 1500 S. Atherton St., State College, PA

I further certify that before the taking of said
deposition, the witness was duly sworn; that the questions and
answers were taken down in stenotypy by the said Reporter-
Notary Public, approved and agreed to, and afterwards reduced to
typewriting or print under the direction of said Reporter.

I further certify that the proceedings and evidence are
contained fully and accurately in the notes taken by me on the
within deposition, and that this copy is a correct transcript of
the same.

In testimony whereof, I have hereunto subscribed my
hand this 14th day of September 1981.

Laurie V. Blackmon

My commission expires
January 28, 1985